# Chapter Twenty-Six

# SPECIAL ENVIRONMENTAL ANALYSES

BUREAU OF DESIGN AND ENVIRONMENT MANUAL

# Chapter Twenty-Six
# SPECIAL ENVIRONMENTAL ANALYSES

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# CHAPTER TWENTY-SIX
# SPECIAL ENVIRONMENTAL ANALYSES

## 26-1 GENERAL

### 26-1.01 Introduction

Although the National Environmental Policy Act (NEPA) is the major mandate for environmental considerations, there are other laws, executive orders, regulations, agreements, etc., which require special studies, analyses, coordination, and documentation on specific environmental issues. Chapter 26 discusses these special requirements for projects affecting highways on the State-maintained system.

### 26-1.02 Policy

As practical, impact analyses and related surveys, studies, and coordination made necessary by environmental laws and requirements other than NEPA shall be integrated with the development of environmental information for inclusion in environmental reports or Phase I Engineering Reports.

### 26-1.03 Topics

Special analyses include the following:

- Section 4(f) Evaluations,
- Section 6(f) Land Conversion Requests,
- OSLAD Land Conversion Requests,
- Historic Act Compliance Documentation,
- Noise Analyses,
- Flood Plain Findings,
- Wetlands Analyses,
- Threatened and Endangered Species/Natural Areas Impact Assessments,
- Evaluations of Farmland Conversion Impacts, and
- Air Quality Conformity Documentation.

### 26-1.04 Applicability

Many of the special environmental analyses discussed in this chapter are the result of Federal requirements. Although the Federally required analyses primarily affect Federally funded or regulated projects, some also may apply to State-only (or State and local) funded projects where the projects will affect resources covered by the Federal requirements. In addition, several of the special analyses discussed are the result of State requirements. These State requirements are often more stringent than those at the Federal level, and they may potentially affect any State project if the project involves the specific types of resources the State requirements address. The "Applicability" discussion for each topic within Chapter 26 should be carefully reviewed to determine the need for compliance with both Federal and State requirements on specific projects.

Information from special analyses should be (or, in some cases, is required to be) included in a project's environmental report (EIS or EA) or Phase I Engineering Report.

## 26-2 SECTION 4(F) EVALUATIONS

### 26-2.01 Introduction

When a project involving approvals or funding from an agency of the U.S. Department of Transportation proposes use of land from a significant publicly owned park, recreational area, or wildlife and waterfowl refuge or any land from a significant historic site, special analyses are required for compliance with Section 4(f) of the Department of Transportation Act of 1966. These special analyses are documented in a Section 4(f) Evaluation, as described in this section.

### 26-2.02 Legal Authority

49 USC 303, commonly known as Section 4(f) of the Department of Transportation Act of 1966 (Public Law 89-665), provides that the Secretary of the US Department of Transportation:

> *. . . may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or site) only if:*
>
> *(1) there is no feasible and prudent alternative to using that land; and*
>
> *(2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.*

### 26-2.03 References

Appendix A of Part III of the *BDE Manual* duplicates the following references which apply to Section 4(f) Evaluations:

- 23 CFR 771 “Environmental Impact and Related Procedures” (see 23 CFR 771.135);
- FHWA Technical Advisory T6640.8A “Guidance for Preparing and Processing Environmental and Section 4(f) Documents” (see Paragraph VII.B., Paragraph VIII.C., and Section IX);
- Section 4(f) Background/Questions and Answers; and
- Programmatic Section 4(f) Evaluations.

Section 26-2 of the *BDE Manual* does not duplicate, with rare exceptions, information from these documents. It provides IDOT-specific information to supplement the references in Appendix A.

## 26-2.04 Procedures

### 26-2.04(a) Definitions

1. Section 4(f) Evaluation. Documentation of the involvement a project would have with Section 4(f) land, addressing alternatives to use of such land and measures to minimize any harm that would result from such use.

2. Section 4(f) Approval. A finding that there is no feasible and prudent alternative to use of Section 4(f) land and that all possible planning to minimize harm to Section 4(f) land is included in the proposed action.

3. Programmatic Section 4(f) Evaluation and Approval. An evaluation and approval addressing a specific category of actions involving use of Section 4(f) land. Where studies and coordination indicate an action will conform to the requirements and conditions of a programmatic evaluation and approval, processing of a separate Section 4(f) Evaluation document for that action is not required.

4. Section 4(f) Land. Land protected under 49 USC 303 (Section 4(f) of the USDOT Act of 1966); i.e., any publicly owned park, recreational area, or wildlife and waterfowl refuge or a historic site (publicly or privately owned) of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, recreational area, refuge or site). The term “historic site” includes both historic and prehistoric archaeological sites determined important for preservation in place.

5. Use. For Section 4(f), use occurs (a) when land from a Section 4(f) site is acquired for a transportation project, (b) when there is an occupancy of land that is adverse in terms of the preservationist purposes of Section 4(f), or (c) when the proximity impacts of a transportation project on a Section 4(f) site, without acquisition of land, are so great that the purposes for which the Section 4(f) site exists are substantially “impaired” (normally referred to by courts as a “constructive use”). Refer to 23 CFR 771.135(p), Section 4(f) Q&A Question #1, and Section 26-2.08 for further discussion concerning “use” under Section 4(f).

6. Historic Significance. For purposes of Section 4(f), historic significance is based on whether a historic site is included on or eligible for inclusion on the National Register of Historic Places (National Register). Inasmuch as the National Register lists historic properties of national, State, and local significance, only those historic sites included on or eligible for inclusion on the National Register are subject to Section 4(f).

**26-2.04(b) Applicability (General)**

References: 23 CFR 771.135(b) *Early evaluation*
23 CFR 771.135(c) *Significance determination*
23 CFR 771.135(d) *Multiple-use lands*
23 CFR 771.135(e) *Historic sites*
23 CFR 771.135(f) *3R projects and historic transportation facilities*
23 CFR 771.135(g) *Archeological sites*
23 CFR 771.135(h) *Late designation/change in significance determination*
Section IX of FHWA Technical Advisory T6640.8A *General application*
Questions and Answers from Section 4(f) Background/Q&A *General application*

Section 4(f) is a Federal requirement which applies only to actions involving funding, an approval, or permit from an agency of the US Department of Transportation (US DOT) (e.g., Federal Highway Administration, US Coast Guard). Further, where such funding, approvals, or permits of the US DOT are involved, the specific applicability of Section 4(f) to a given action is based on regulatory criteria and interpretations, both by the courts and by agencies of the US DOT. FHWA regulatory criteria for applicability of Section 4(f) are stipulated in 23 CFR 771.135. Information concerning various interpretations that have been made regarding specific types of Section 4(f) resources and project actions is presented in the Section 4(f) Background/Q&A in Appendix A. Where applicability questions arise that are not addressed by the FHWA regulatory criteria and/or interpretations that have been issued, the matter should be discussed with BDE and the responsible agency of the US DOT (in most cases FHWA) as early as practical in the development of the action involved. The final determination of Section 4(f) applicability will be made by the responsible agency of the US DOT.

Where there is a question concerning applicability of Section 4(f) to a specific resource involvement, any determination that Section 4(f) does <u>not</u> apply should be appropriately documented (e.g., a reference to a previously issued determination by FHWA, a copy of a project-specific letter from FHWA, a copy of meeting minutes, or a memorandum to the files documenting discussions of the issue with FHWA) in the Phase I Engineering Report or environmental document and in the project files. Such documentation should include, as appropriate, evidence of the views of the official(s) having jurisdiction over the Section 4(f) resource.

**26-2.04(c) Applicability to Wetlands**

The Federal Emergency Wetlands Resources Act of 1986 (P.L. 99-645) requires that comprehensive Statewide outdoor recreational plans prepared for Fiscal Year 1988 and thereafter "...address wetlands ... as an important recreation resource." Therefore, publicly owned wetlands identified in recreational plans as important recreational resources may be subject to Section 4(f). This will depend upon whether a recreational activity is a primary function of the wetland. Incidental, secondary, occasional, or dispersed recreational activities in or near publicly owned wetlands will not be a sufficient basis for applying Section 4(f) procedures. Wetlands included

within a resource otherwise subject to Section 4(f) will be covered by Section 4(f). The following guidance applies to wetlands not included within such resources.

For projects involving possible use of land from a publicly owned wetland, the determination of Section 4(f) applicability will be made on a case-by-case basis. Where a proposed project potentially will involve the use of land from a wetland area, the environmental survey and coordination accomplished via the BDE will identify if the wetland is (a) publicly owned, (b) designated for recreation, and (c) whether recreational use is a primary function of the wetland. If the area appears to meet the criteria of applicability of Section 4(f), BDE will initiate appropriate coordination with FHWA (or the US Coast Guard, if it is the lead Federal agency) to obtain a determination of Section 4(f) applicability.

If Section 4(f) is determined to apply to the wetland, BDE's response to the environmental survey request will so indicate.

### 26-2.04(d) Applicability to Architecturally Significant Historic Buildings

References: 23 CFR 771.135(e) *Historic sites*
23 CFR 771.135(f) *3R projects and historic transportation facilities*
Question #3 from Section 4(f) Background/Q&A *Historic sites*

FHWA has determined that the provisions of Section 4(f) are not applicable to the relocation of historic buildings on or eligible for the National Register of Historic Places (NRHP) if all of the following conditions are met:

- The building is significant solely for its architectural features (i.e., style or method of construction).
- Neither the land associated with the building nor the building's setting contributes to its qualification for the National Register.
- The building will not be disassembled for moving to a new location.

The non-applicability of Section 4(f) under this policy will be approved by the FHWA Division Office on a case-by-case basis.

These procedures are applicable to State highway projects involving an approval or funding action by an agency of the US Department of Transportation where, as a part of such projects, relocation of a building on or eligible for the NRHP is being considered. The district should advise BDE as soon as practical if relocation of a building on or eligible for the National Register is contemplated. The notification to BDE should include the name of the building (from NRHP site listings, Historic Structures or Historic Landmarks Survey inventory reports, or the cultural resource survey report from BDE) and a description of its location (e.g., county, township, section, city, street address, as appropriate).

In response to this notification, BDE will initiate coordination to obtain the following:

- information on the basis for significance of the building;
- a determination of whether the land associated with the building or the building's setting contributes to its qualification for the NRHP;
- the views of the State Historic Preservation Officer (SHPO) on the acceptability and practicality of relocating the building; and
- a preliminary determination from FHWA concerning approval of the Section 4(f) policy for architecturally significant historic buildings where it appears all the criteria for non-applicability of Section 4(f) will be met. The final approval decision is contingent upon confirmation that the building will not be disassembled for moving.

BDE will provide the results of this coordination to the district for use in deciding whether to pursue relocation of the building, considering the Section 4(f) implications and the views of the SHPO. Where the proposal to relocate the building is pursued and it is determined that all criteria for exemption from the Section 4(f) requirements are met, BDE will request formal FHWA approval of the determination that Section 4(f) is not applicable. This will occur when the documentation for compliance with Section 106 of the National Historic Preservation Act (i.e., documentation of No Adverse Effect or Adverse Effect (Preliminary Case Report)) is forwarded to FHWA for coordination with the SHPO and the Advisory Council on Historic Preservation. See Section 26-5.

**26-2.04(e) Development**

References: 23 CFR 771.135(h) *Late designation/change in significance determination*
23 CFR 771.135(i) *Evaluation of alternatives/documentation/comments*
23 CFR 771.135(k) *Legal sufficiency*
23 CFR 771.135(l) *Approval*
23 CFR 771.135(m) *Circulation of separate Section 4(f) Evaluations*
23 CFR 771.135(n) *Section 4(f) determination after processing of environmental document*
pp. 3-7 of Section 4(f) Background/Q&A *General application*

In addition to the cited references, the following will apply to the development of a Section 4(f) Evaluation:

1. Timing. Any involvement with Section 4(f) land normally shall be evaluated early in the planning phase of project development when alternatives for the proposed action are under study. A Section 4(f) Evaluation must be prepared for each location within a proposed project where use of Section 4(f) land would be involved. The evaluations of alternatives to avoid the use of Section 4(f) land and of possible measures to minimize harm to such lands shall be developed in cooperation with FHWA. Consideration shall be

given to whether the Section 4(f) involvement meets the criteria for use of a programmatic Section 4(f) Evaluation. Where Section 4(f) approval is given under a programmatic evaluation, a copy of the approval documentation should be included in the Phase I Engineering Report or Environmental Report for the action.

The processes for a CE, EA, and EIS in Chapters 23, 24, and 25 provide a more specific indication of the timing for Section 4(f) Evaluations.

2. Section 6(f)/Open Space Funds. If land acquired or improved with Federal grant money (Land and Water Conservation (LAWCON-6(f)) or Department of Housing and Urban Development open space funds) is involved, the final Section 4(f) Evaluation shall include a description of the coordination with the grantor agency. (See Section 26-3 for Section 6(f) requirements.)

3. Mitigation. In applying the standard of "unique problems" that would justify the use of Section 4(f) land, the net impact of any build, no-action, or mitigation alternative on both the 4(f) property and the surrounding area or community must be considered. In this context, the term "mitigation alternative" refers to changes or adjustments in the design or location of the proposed action which would reduce Section 4(f) impacts; it does not refer to mitigation measures that would be "added on" to the project (e.g., purchase of replacement land).

4. FHWA Approvals. The FHWA Division Office will have responsibility and authority for reviewing Section 4(f) Evaluations and giving Section 4(f) approvals.

## 26-2.05 Section 4(f) Evaluation

### 26-2.05(a) Draft Evaluation

References: 23 CFR 771.135(i) *Evaluation of alternatives/documentation/comments*
23 CFR 771.135(j) *Documentation of basis for Section 4(f) determination*
23 CFR 771.135(m) *Circulation of separate Section 4(f) Evaluation*
23 CFR 771.135(o) *Tiered EIS's*
23 CFR 771.135(p) *Use*
Paragraph VII.B. of FHWA Technical Advisory T6640.8A *Copies for distribution*
Paragraph IX.A. of FHWA Technical Advisory T6640.8A *Format and content*

When more than one alternative is under consideration, the Section 4(f) Evaluation should discuss each alternative requiring the use of Section 4(f) land.

### 26-2.05(b) Format (Draft Evaluation)

Reference: Paragraph IX.A of FHWA Technical Advisory T6640.8A *Format and Content*

The following format is recommended for the draft Section 4(f) Evaluation. When included in a draft EIS or EA, the information should be placed in a special section labeled "Section 4(f) Evaluation":

- Cover Sheet,*
- Table of Contents,*
- Description of Proposed Action,
- Description of Section 4(f) Property(ies),
- Impacts on the Section 4(f) Property(ies),
- Avoidance Alternatives,
- Measures to Minimize Harm, and
- Section 4(f) Coordination.

* *Needed only where the Section 4(f) Evaluation is prepared as a separate document*.

**26-2.05(c) Contents (Draft Evaluation)**

Reference: Paragraph IX.A. of FHWA Technical Advisory T6640.8A *Format and content*

In addition to the cited reference, the following will apply to the contents of a Section 4(f) (draft) Evaluation:

1. Cover Sheet. The suggested format and contents for a Section 4(f) Evaluation cover sheet is presented in Figure 26-2A.

2. Table of Contents. The Table of Contents should provide the title and page numbers for each major section and subsection of the Evaluation. Maps, charts, tables, etc., should have separate listings in the Table of Contents.

**26-2.05(d) Final Evaluation**

References: 23 CFR 771.135(j) *Documentation of basis for Section 4(f) determination*
23 CFR 771.135(k) *Legal Sufficiency*
23 CFR 771.135(l) *Approval*
23 CFR 771.135(m) *Circulation of separate Section 4(f) Evaluation*
Paragraph VII.B. of FHWA Technical Advisory T6640.8A *Copies for distribution*
Paragraph IX.B. of FHWA Technical Advisory T6640.8A *Documentation required for final Section 4(f) Evaluation*

(Route, Termini, City or County, and State)

DRAFT (FINAL) SECTION 4(f) EVALUATION
Submitted Pursuant to 49 USC 303
by the

U. S. Department of Transportation
Federal Highway Administration

and

Illinois Department of Transportation

Cooperating Agencies
(Include List Here, as applicable)

Date of Approval

For FHWA

The following persons may be contacted for additional information concerning this document:

(Name)
Division Administrator
Federal Highway Administration
3250 Executive Park Drive
Springfield, Illinois 62703
Telephone: 217-492-4640

(Name, office address, and phone number of IDOT District Engineer)

A one-paragraph abstract of the Evaluation indicating project type, length, etc.

Comments on this draft Evaluation are due by (date) and should be sent to (name and office address of IDOT District Engineer).*

**To be used on the draft Evaluation only*.

**COVER SHEET FORMAT**
**(Separate Section 4(f) Evaluation)**

**Figure 26-2A**

When the preferred alternative uses Section 4(f) land, a final Section 4(f) Evaluation must be prepared. If the Section 4(f) Evaluation is a separate document, appropriate changes should be made in the Cover Sheet and Table of Contents to reflect that it is a final Evaluation. The final Section 4(f) Evaluation should include the information in the cited reference from FHWA Technical Advisory T6640.8A.

## 26-2.06 Coordination and Processing

References: 23 CFR 771.135(i) *Evaluation of alternatives/documentation/comments*
23 CFR 771.135(j) *Documentation of basis for Section 4(f) determination*
pp. 6 and 7 of the Section 4(f) Background/Q&A *Coordination/format and approval/ programmatic Section 4(f) Evaluation*

In addition to the cited references, the following will apply to the coordination and processing of Section 4(f) Evaluations:

1. Programmatic Section 4(f). Appendix A includes the Programmatic Section 4(f) Evaluations for the following: historic bridges; minor involvements with public parks, recreation lands, and wildlife and waterfowl refuges; minor involvements with historic sites; and independent bikeway or walkway construction projects. Uses of Section 4(f) land covered by a Programmatic Section 4(f) Evaluation shall be documented and coordinated as specified in the applicable Programmatic Evaluation. Where Section 4(f) approval is given under a Programmatic Evaluation, a copy of the approval documentation should be included in the Phase I Engineering Report or environmental report for the action. Figure 26-2B presents the recommended format for the Cover Sheet (and approval documentation) for a Programmatic Section 4(f) Evaluation submittal. The recommended Cover Sheet format includes a paragraph that identifies which Programmatic Section 4(f) Evaluation is being used. This paragraph includes a space for entering the date on which the Programmatic Section 4(f) Evaluation was approved. For use of the Programmatic Section 4(f) Evaluation on historic bridges, or either of the Programmatic Section 4(f) Evaluations on minor involvements, the “issued on” date, indicated at the end of each, should be entered as the “approved on” date in the Cover Sheet paragraph. For use of the Programmatic Section 4(f) Evaluation on bikeway/walkway projects, enter May 23, 1977 in the Cover Sheet paragraph; the date on which that Programmatic Section 4(f) Evaluation was originally approved and issued.

2. Comments. Comments received as a result of coordinating the Section 4(f) Evaluation shall be given careful consideration. If the selected alternative requires the use of Section 4(f) land, the IDOT district office and the FHWA Division Office shall ensure that the EA/FONSI, the Final EIS or final Section 4(f) Evaluation includes sufficient information to fully support Section 4(f) approval.

Project Information
(e.g., FAP number, termini, location)

SECTION 4(f) APPROVAL

U. S. Department of Transportation
Federal Highway Administration

The Federal Highway Administration (FHWA) has determined that this project meets all requirements for processing under the nationwide programmatic Section 4(f) Evaluation for [historic bridges; bikeways; publicly owned parks, recreational lands, or wildlife and waterfowl refuges; or historic sites] approved on [ (date) ]. This determination is based on the attached documentation which has been independently evaluated by FHWA and determined to adequately and accurately discuss the Section 4(f) considerations on this project. Accordingly, FHWA gives Section 4(f) approval under the nationwide Section 4(f) Evaluation for [Alternative X], which uses land from [resource name].

Date

For Federal Highway Administration

*Note: Where brackets are used, select the proper evaluation or fill in the proper information.*

**COVER SHEET FORMAT**
**(Programmatic Section 4(f) Evaluation)**

**Figure 26-2B**

3. USDOI. If the Section 4(f) Evaluation is included in an EIS, US DOI Headquarters should receive the number of copies required for the EIS (see Chapter 25). If the Section 4(f) Evaluation is processed as part of an EA, US DOI should receive seven copies of the draft Section 4(f) Evaluation for coordination and seven copies of the final Section 4(f) Evaluation for information.

## 26-2.07 Alternatives Selection Process

References: 23 CFR 771.135(i) *Evaluation of alternatives/documentation/comments*
Paragraph IX.A.4. of FHWA Technical Advisory T6640.8A *Avoidance alternatives*
p. 4 and 5 of Section 4(f) Background/Q&A *Alternatives*

This Section reproduces a FHWA paper which describes its policy on the selection of alternatives for projects potentially involving use of land from a Section 4(f) resource. The information in the paper should guide the evaluation of feasible and prudent alternatives and the sequence of decision-making in the selection of an alternative to avoid or minimize harm to the Section 4(f) resource.

The first test under Section 4(f) is to determine which alternatives are feasible and prudent. An alternative may be rejected as not being feasible and prudent for any of the following reasons:

- not meeting the project purpose and need;
- excessive cost of construction;
- severe operational or safety problems;
- unacceptable adverse social, economic, or environmental impacts;
- serious community disruption; or
- an accumulation of a lesser magnitude of the foregoing factors.

Harm to a Section 4(f) resource should not be included in those factors which are considered in determining whether an alternative is feasible and prudent. Where sufficient analysis has been completed to demonstrate that a specific alternative is not feasible and prudent, no additional analysis or consideration of that alternative is required.

After the alternatives which are not feasible and prudent are eliminated, a determination must be made on whether one or more of the remaining alternatives avoid the use of land from Section 4(f) resources. If such avoidance alternatives exist, one of them must be selected, in which case, further processing of a Section 4(f) Evaluation is not required. On the other hand, if all of the remaining feasible and prudent alternatives use land from Section 4(f) resources, then a (least-harm) analysis must be performed to determine which alternative does the least overall harm to the Section 4(f) resources. In performing this analysis, the net harm (after mitigation) to the resource is the governing factor. The net harm should be determined in consultation with the agency (the SHPO in the case of historic sites) having jurisdiction over or ownership of the

resource. The feasible and prudent alternative which does the least harm must be selected. Where there is more than one least-harm alternative (i.e., there is little or no difference in the overall harm to the Section 4(f) resources), any of the least-harm alternatives may be selected.

The following examples illustrate the alternative selection process described above. On project 1, Alternatives C and D are determined not to be feasible and prudent. Although these alternatives may or may not use land from a Section 4(f) resource, it is immaterial, and no further analysis is warranted. Because Alternatives A and B are feasible and prudent and because "B" does not use land from a Section 4(f) resource, Alternative B must be selected. It is not necessary to determine the relative harm that Alternative A has on the Section 4(f) resources, because Alternative B is a feasible and prudent avoidance alternative.

On project 2, Alternatives C and D are determined not to be feasible and prudent. No further consideration need be given these alternatives. Of the remaining feasible and prudent alternatives, both Alternatives A and B use land from Section 4(f) resources. FHWA can approve only the feasible and prudent alternative which does the least overall harm to the Section 4(f) resources. For project 2, all feasible and prudent alternatives use land from a Section 4(f) resource; therefore, Alternative B must be selected because it does less harm to the Section 4(f) resources.

Figure 26-2C summarizes the two examples.

| Project | Alternative | Feasible and Prudent | Uses Section 4(f) Land | Relative Net Harm to Section 4(f) Land After Mitigation |
|---|---|---|---|---|
| 1 | A | Yes | Yes | N/A** |
| | B | Yes | No | None |
| | C | No | Yes (N/A)* | N/A* |
| | D | No | No (N/A)* | N/A* |
| 2 | A | Yes | Yes | Greater |
| | B | Yes | Yes | Lesser |
| | C | No | Yes (N/A)* | N.A.* |
| | D | No | No (N/A)* | N.A.* |

** Because this Alternative is not feasible and prudent, it should be eliminated from further consideration. Whether Section 4(f) land is used and the relative harm to Section 4(f) protected properties are no longer relevant factors.*

*** In Project 1, there is a feasible and prudent alternative which does not use Section 4(f) protected property (Alternative B). Any alternative which uses Section 4(f) protected property must be eliminated from further consideration.*

**SECTION 4(f) ALTERNATIVES EVALUATION**

**Figure 26-2C**

## 26-2.08 Constructive Use

References: 23 CFR 771.135(p) *Use*
Question #1 of Section 4(f) Background/Q&A *Use of land*

### 26-2.08(a) Background

In general, "constructive use" of a resource protected under Section 4(f) occurs when the proximity impacts of a highway project "substantially impair" the function/integrity of the resource. For parks, recreational areas, or wildlife and waterfowl refuges, "constructive use" relates to the function of each resource; for historic properties, it relates to the integrity of the context or setting of the resource. This Section provides procedural guidance for determining whether a project involves "constructive use" and for coordinating and documenting the results of that determination.

### 26-2.08(b) Procedures

These procedures are applicable to projects involving an approval or funding action by an agency of the US Department of Transportation where such projects are located in proximity to a Section 4(f) resource.

The responsible district should first identify the functions, activities, and qualities of the Section 4(f) resource which may be sensitive to proximity impacts. For example, an architecturally significant historic resource may be sensitive to visual intrusion, but a wildlife and waterfowl refuge may be sensitive to noise or water quality effects that could impair the habitat value of the refuge.

After the features sensitive to proximity impacts have been identified, the district should then evaluate the project impacts on the Section 4(f) resource in terms of these features. Impacts which can be quantified (such as noise or water quality) should be considered in quantitative terms relative to existing conditions and relevant standards. Impacts which cannot be quantified (such as visual intrusion) should be evaluated in qualitative terms. For historical resources subject to Section 4(f), the preliminary determination of effect/adverse effect required by the regulations of the Advisory Council on Historic Preservation (ACHP) will provide a basis for assessing whether "substantial impairment" of the resource may be likely to occur. See Section 26-5.

The results of the preliminary evaluation of impacts should be coordinated with the public agency which owns or has jurisdiction over the park, recreational area, or refuge, or with the State Historic Preservation Officer (SHPO) for historic sites. This coordination should obtain input on the severity of impact on the function/integrity of the resource. For historic resources, the necessary coordination with the SHPO will be accomplished by BDE in conjunction with processing of the documentation necessary for compliance with the regulations of the ACHP (e.g., No Effect Finding, Determination of No Adverse Effect, or Preliminary Case Report).

Upon completing the coordination, a determination should be made on whether the project's impacts would "substantially impair" the function/integrity of the resource. For historic resources, BDE will provide the district a response addressing this determination as part of the coordination of the compliance documentation required by the ACHP regulations. For parks, recreational areas, or wildlife and waterfowl refuges, the district should make this determination based on the preliminary evaluation of effects and the results of coordination.

### 26-2.08(c) Documentation

If the evaluation of impacts concludes that the project's proximity effects do not cause substantial impairment to the Section 4(f) resource(s) involved, it can be concluded that there is no "constructive use." The environmental documentation for the project should summarize the results of this analysis and the conclusion on substantial impairment.

If the evaluation concludes that there will be a "constructive use," a Section 4(f) Evaluation must be prepared for the action.

## 26-3 SECTION 6(F) LAND CONVERSION REQUEST

### 26-3.01 Introduction

Special procedures are required when lands which have Land and Water Conservation (LAWCON) funds involved in their purchase or development will be used for highway purposes. This section discusses these procedures. Similar procedures may be required where lands are involved that have been improved or developed with funds under Section 1010 of the Urban Park and Recreation Recovery Act of 1978. There are few such sites in the State. Specific procedural requirements will be addressed on a case-by-case basis.

### 26-3.02 Legal Authority

16 USC 4601-8(f)(3), commonly known as Section 6(f) of the Land and Water Conservation Fund Act of 1965 (Public Law 88-578), requires that:

> *... No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive Statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.*

"Secretary" refers to the Secretary of the US Department of Interior. The authority to approve Section 6(f) land conversions has been delegated to the Regional Directors of the National Park Service (NPS).

The Illinois Department of Natural Resources publishes the Statewide Comprehensive Outdoor Recreation Plan for Illinois. Copies of the most recent plan are available in the district offices and may be obtained from BDE.

### 26-3.03 Policy

Special efforts shall be made in the development of a project to identify and preserve public outdoor recreational areas and facilities.

### 26-3.04 Procedures

#### 26-3.04(a) Applicability

Section 6(f) procedures shall be followed for all IDOT projects, regardless of project type or funding source.

### 26-3.04(b) Coordination

Early and ongoing coordination with the official having jurisdiction over the 6(f) land, the Illinois Department of Natural Resources, and the NPS Regional Director should be diligently pursued.

### 26-3.04(c) Report Requirements

When a project proposes use of land in which Land and Water Conservation (LAWCON) funds have been involved in its purchase or development, Section 6(f) requires the approval of the Secretary of the Interior for the conversion of the land to other than public outdoor recreational use. Section 6(f) does not otherwise require a special report. Involvement with the Section 6(f) land should be discussed in the environmental documentation for the project and in any documentation for compliance with Section 4(f) when the project will involve the use of Section 6(f) land from a significant publicly owned park, recreational area, or wildlife and waterfowl refuge.

For a State-only funded highway project involving 6(f) lands, information on the 6(f) involvement should be incorporated in the action's Phase I Engineering Report.

### 26-3.04(d) Conversion Request

Requests to convert LAWCON-assisted properties in whole or in part to other than public outdoor recreational uses must be submitted through the Illinois Department of Natural Resources (IDNR) to the appropriate NPS Field Director in writing. NPS will consider the conversion request if the prerequisites described below have been met. As applicable, districts should submit a request for Section 6(f) land conversion approval to BDE when the project is submitted for design approval. BDE will forward the conversion request to the IDNR Division of Grant Administration for submittal to the appropriate NPS Field Director. Formal review periods for conversion requests are not specified in the regulation. IDNR has advised that the typical time frame for NPS response to conversion requests is 60 to 90 days.

The conversion request should include information to address each of the following points (based on information extracted from NPS regulations on compliance responsibilities for LAWCON-assisted properties):

1. Alternatives. All practical alternatives to the proposed conversion have been evaluated.

2. Value. The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by an approved appraisal (prepared according to uniform Federal appraisal standards) excluding the value of structures or facilities that will not serve a recreational purpose.

3. Replacement Property. The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Depending upon the situation and at the discretion of the NPS Field Director, the replacement property need not provide identical recreational experiences or be located at the same site, provided it is in a reasonably equivalent location. Generally, the replacement property should be administered by the same political jurisdiction as the converted property. Equivalent usefulness and location will be determined based on the following criteria:

   - Property to be converted must be evaluated to determine what recreational needs are being fulfilled by the facilities which exist and the types of outdoor recreational resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet the recreational needs which are at least similar in magnitude and impact to the user community as the converted site. This criterion is applicable in the consideration of all conversion requests with the exception of those where wetlands are proposed as replacement property. Wetland areas and interests therein which have been identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion regardless of the nature of the property proposed for conversion.

   - Replacement property need not necessarily be directly adjacent to or close to the converted site. This policy provides the administrative flexibility to determine a location recognizing that the property should meet existing public outdoor recreational needs. Although generally this will involve the selection of a site serving the same community(ies) or area as the converted site, there may be exceptions. For example, if property being converted is in an area undergoing major demographic change and the area has no existing or anticipated future need for outdoor recreation, then the district should seek to locate the substitute area in another location within the jurisdiction.

   - The acquisition of one parcel of land may be used in satisfaction of several approved conversions.

4. Eligibility Requirements. The property proposed for substitution must meet the eligibility requirements for LAWCON-assisted acquisition. The replacement property must constitute or be part of a viable recreational area. Unless *each* of the following additional conditions is met, land currently in public ownership, including that which is owned by another public agency, may not be used as replacement land for land acquired as part of a LAWCON project:

   - The land was not acquired by IDOT or the selling agency for recreation.

- The land has not been dedicated or managed for recreational purposes while in public ownership.

- No Federal assistance was provided in the original acquisition unless the assistance was provided under a program expressly authorized to match or supplement LAWCON assistance.

- Where IDOT acquires the land from another public agency, the selling agency must be required by law to receive payment for the land so acquired.

In the case of development projects for which the State match was not derived from the cost of the purchase or value of a donation of the land to be converted but from the value of the development itself, public land which has not been dedicated or managed for recreational/ conservation use may be used as replacement land even if this land is transferred from one public agency to another without cost.

5. Partial Conversion — Effect on Remainder. In the case of assisted sites which are partially rather than wholly converted, the impact of the converted portion on the remainder shall be considered. If such a conversion is approved, the unconverted area must remain recreationally viable or be replaced as well.

6. Coordination. All necessary coordination with other Federal agencies has been satisfactorily accomplished including, for example, compliance with Section 4(f).

7. Environmental Review. The guidelines for environmental evaluation have been satisfactorily completed and considered by NPS during its review of the proposed 6(f) action. Where the proposed conversion arises from another Federal action, final review of the State's proposal shall not occur until the NPS Regional Office is assured that all environmental review requirements related to that other action have been met.

8. State Clearinghouse. State intergovernmental clearinghouse review procedures have been met, if the proposed conversion and substitution constitute significant changes to the original LAWCON project.

9. SCORP. The proposed conversion and substitution are consistent with the Statewide Comprehensive Outdoor Recreation Plan (SCORP) and/or equivalent recreational plans.

## 26-4 OSLAD LAND CONVERSION REQUEST

### 26-4.01 Introduction

Special procedures, similar to those applicable under Section 6(f), are required when lands which have Open Space Land Acquisition and Development (OSLAD) grant program funds involved in their purchase or development will be converted to other than public outdoor recreational uses.

### 26-4.02 Legal Authority

The OSLAD program is a State-funded grant program authorized by the Open Space Lands Acquisition and Development Act (525 ILCS 35/1, et seq.). Illinois Administrative Code provisions for the OSLAD grant program (Ill Adm Code 17 Part 3025) incorporate by reference essentially the same compliance procedures as required for the Land and Water Conservation Fund (LAWCON) grant program. However, because the OSLAD program is State-funded, concurrence of the National Park Service is not required for proposed conversion of OSLAD-assisted lands to other than public outdoor recreational use.

### 26-4.03 Policy

Special effort shall be made in the development of a project to identify public outdoor recreational areas and to comply with applicable requirements when projects propose the conversion of such areas to other than public outdoor recreational use.

### 26-4.04 Procedures

The following procedures will apply:

1. Applicability. Compliance procedures for proposed conversion of OSLAD-assisted lands are applicable to all projects proposing such conversion, regardless of project type or funding source.

2. Coordination. Early and ongoing coordination with the official having jurisdiction over the OSLAD-assisted land and the Illinois Department of Natural Resources (IDNR) should be diligently pursued.

3. Report Requirements. When a project proposes the use of land in which OSLAD funds have been involved in its purchase or development, the Director of IDNR must approve conversion of the land to other than public outdoor recreational use; however, a special report is not required. Involvement with the OSLAD-assisted land should be discussed in the environmental documentation for the project and in any documentation for

compliance with Section 4(f) when the project would involve use of OSLAD-assisted land from a significant publicly owned park, recreational area, or wildlife and waterfowl refuge.

For a State-only funded highway project involving OSLAD-assisted lands, information on the involvement should be incorporated in the action's Phase I Engineering Report.

4. Conversion Request. Requests to convert OSLAD-assisted properties in whole or in part to other than public outdoor recreational uses must be submitted to the IDNR in writing. IDNR will approve conversions only upon the substitution of replacement property having equal fair market value and comparable outdoor recreational usefulness, quality, and location. As applicable, districts should submit a request for OSLAD land conversion approval to BDE when the project is submitted for design approval. BDE will forward the conversion request to the IDNR Division of Grant Administration for review and approval. Formal review periods for conversion requests are not specified in the OSLAD regulation.

IDNR regulations do not specify information requirements for conversion requests; however, the information specified in the 6(f) requirements to support fair market value and comparable outdoor recreational usefulness, quality, and location (see Section 26-3.04(d)) should serve as a guide for the items to address in preparing OSLAD conversion requests.

## 26-5 HISTORIC ACT COMPLIANCE DOCUMENTATION

### 26-5.01 Introduction

In the development of a Federally funded/regulated project, it is necessary to consider the effects of the undertaking on properties included in or eligible for inclusion in the National Register of Historic Places. Where such properties will be affected, the Advisory Council on Historic Preservation must be afforded a reasonable opportunity to comment on the undertaking, prior to project approval.

### 26-5.02 Legal Authority

The following legal authority regulates or influences the policies and procedures for Section 106 documentation:

- 16 USC 470f, Section 106 of the National Historic Preservation Act of 1966, as amended.
- 16 USC 470h-2, Section 110(f) of the National Historic Preservation Act of 1966, as amended.
- Executive Order 11593, Protection and Enhancement of the Cultural Environment.
- 23 USC 138 and 49 USC 303, Section 4(f) of the Department of Transportation Act of 1966.

Appendix C briefly describes each of these.

### 26-5.03 Policy

In the development of a proposed Federally funded/regulated project, appropriate measures shall be taken to evaluate the undertaking's effect on properties included in or eligible for inclusion in the National Register of Historic Places. Where such properties will be affected, the Advisory Council on Historic Preservation shall be afforded a reasonable opportunity to comment prior to project approval. Special efforts shall be made to minimize harm to any National Historic Landmark that may be directly and adversely affected by a proposed Federally funded/regulated undertaking.

## 26-5.04 Federal Requirements

### 26-5.04(a) Definitions

1. Area of Potential Effects. The geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

2. Council. The Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

3. Historic Property. Any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

4. Indian Tribe. The governing body of any Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members.

5. Interested Person. Those organizations and individuals that are concerned with the effects of an undertaking on historic properties.

6. Local Government. A city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

7. National Historic Landmark. A historic property that the Secretary of the Interior has designated as a National Historic Landmark.

8. National Register. The National Register of Historic Places maintained by the Secretary of the Interior.

9. National Register Criteria. The criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register.

10. State Historic Preservation Officer. The official appointed or designated pursuant to Section 101(b)(1) of the National Historic Preservation Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer. The State Historic Preservation Officer for Illinois is the Director of the State Historic Preservation Agency.

11. Undertaking. Any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect

jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.

**26-5.04(b) Applicability**

These procedures apply to all Federally funded/regulated highway projects that may result in changes in the character, setting or use of a historic property.

**26-5.04(c) Development**

The following guidance reflects the assumption that FHWA, in most cases, will be the lead Federal agency for a project subject to the Section 106 requirements. If a different Federal agency is the lead (e.g., USACOE for a State-only funded project requiring a Section 404 permit), that agency would fulfill the functions indicated for FHWA:

1. Identification. Historic properties shall be identified in the area of potential effects of a proposed highway undertaking as early as practical in the development of the undertaking. Such properties may be identified from listings of National Register and eligible properties published by the Keeper of the National Register (e.g., in the Federal Register); from local (e.g., county, city) inventories of historic sites; through coordination with the State Historic Preservation Officer (SHPO) or local historic groups; or through field investigations (e.g., conducted as part of the IDOT "Integrated Survey Process;" see Chapter 27).

2. No Sites Identified. If no historic properties are found, documentation of this finding shall be provided to the SHPO. Ordinarily, the documentation will consist of the Environmental Survey Request form for the project on which the results of the survey will be indicated. Coordination of this information with the SHPO will be accomplished by BDE. A copy of the response from the SHPO, if any, will be returned to the IDOT district office. Persons and parties known to be interested in the undertaking and its possible effects on historic properties should be notified of the finding. For some project types, agreements with the SHPO and the Federal Highway Administration permit BDE to issue an "in-house" clearance on historic properties without the need for field surveys or project-specific coordination with the SHPO. For such projects, the Environmental Survey Request form, stamped and signed by the Cultural Resources Unit of BDE, constitutes the necessary documentation of Section 106 compliance.

3. Potential Sites Identified. If sites, buildings, structures, or objects are identified in the area of potential effects of an undertaking for which the National Register eligibility status has not been determined, appropriate information must be coordinated with the SHPO and, as appropriate, the Keeper of the National Register (in the US Department of Interior) for a determination of eligibility. This coordination ordinarily will be accomplished by BDE. In most cases, the information needed for the eligibility determination will be obtained

through the studies conducted in response to the submittal of the Environmental Survey Request form for the undertaking. Where additional information is needed, BDE may request the assistance of the district office in obtaining specific items of information.

The determination of eligibility will be based on the National Register Criteria for Evaluation (refer to Section 26-5.04(d)).

4. Determining Effect. For all historic properties in the area of potential effects of a highway undertaking, the effects of the undertaking must be assessed. This assessment will be based on the Criteria of Effect and Adverse Effect (refer to Section 26-5.04(e)) developed by the Advisory Council on Historic Preservation.

5. "No Effect" Finding. If it is determined that the undertaking will have no effect on historic properties, BDE will provide documentation of this finding (ordinarily a letter and the results of the Cultural Resources portion of the environmental survey) to the SHPO and to interested persons who have made their concerns known. Unless the SHPO objects within 30 days of receiving such notice, no further actions are required for Section 106 compliance. If the SHPO provides a written response concurring in the no-effect finding, BDE will provide a copy to the district office.

6. Determining Adverse Effect. If an effect on a historic property is found (or if the SHPO objects to a no-effect finding), the effect must be evaluated under the Criteria of Adverse Effect (refer to Section 26-5.04(e)). In addition, the public and interested persons must be afforded notice of the opportunity to comment on any project affecting a site on or eligible for the National Register. Districts may accomplish this notification as part of the announcements for public involvement activities or the public availability of environmental documents for comment or through publication of a separate notice specifically for that purpose. The announcement or notice should include a statement to the effect that:

> *In accordance with the National Historic Preservation Act, the views of the public and interested persons are being sought regarding the effect of the project on [list the specific National Register or eligible property(ies) involved] which is included on [or eligible for inclusion on] the National Register of Historic Places.*

This published notice will be in addition to any other direct contacts the district may have with the public or interested persons to obtain their views regarding the project's effect on historic resources. Any views received in response to the notification should be considered and documented in the Section 106 compliance information (refer to Section 26-5.04(f)).

If the effect is not considered adverse under the Criteria of Adverse Effect, BDE will coordinate this finding with the SHPO. The following outcomes may occur:

- If the SHPO concurs in the finding, BDE will notify the Council, via FHWA, and will provide summary documentation (i.e., the information that was coordinated with the SHPO) to support the finding.

- If the SHPO does not concur in the finding, BDE will submit documentation of the Finding of No Adverse Effect (refer to Section 26-5.04(f)) to the Council, via FHWA, for a 30-day review period and will notify the SHPO.

If the Council does not object to the Finding of No Adverse Effect within 30 days of receipt of notice, or if the Council objects but proposes changes that are accepted (by IDOT and FHWA), no further steps are required in the Section 106 process other than to comply with any agreement with the SHPO or Council concerning the undertaking.

If the Council objects to the Finding of No Adverse Effect and changes proposed by the Council, if any, are not accepted, then the effect will be considered as adverse.

7. "Adverse Effect" Finding. If an adverse effect on historic properties is found, BDE will notify the Council, via FHWA (except in cases where the Council has objected to a Finding of No Adverse Effect), and will initiate consultation in cooperation with the IDOT district office to seek ways to avoid or reduce the effects on historic properties. The SHPO or IDOT/FHWA may request the Council to participate. The Council may participate in the consultation without such request. Interested persons will be invited to participate as consulting parties when they so request. Members of the public also shall have an opportunity to receive information and express their views (refer to Section 26-5.04(g)). BDE will provide each of the consulting parties documentation of the Finding of Adverse Effect (refer to Section 26-5.04(f)).

8. Memorandum of Agreement. If IDOT/FHWA and the SHPO agree upon ways to avoid or reduce adverse effects or agree to accept such effects, they shall execute a Memorandum of Agreement. Ordinarily, BDE will prepare the Memorandum of Agreement in consultation with the IDOT district office, FHWA, and the SHPO. When the Council participates in the consultation, it shall execute the Memorandum of Agreement with IDOT/FHWA and the SHPO. When the Council has not participated in consultation, BDE will submit (via FHWA) the Memorandum of Agreement, with appropriate documentation (refer to Section 26-5.04(f)). As appropriate, IDOT/FHWA, the SHPO, and the Council, if participating, may agree to invite other parties to concur in the Agreement.

When IDOT/FHWA submit a Memorandum of Agreement and related documentation to the Council, the Council will have 30 days from receipt to review it. Before this review period ends, the Council will:

- accept the Memorandum of Agreement, which concludes the Section 106 process; or

- advise IDOT/FHWA of changes to the Memorandum of Agreement to make it acceptable; subsequent agreements by IDOT/FHWA, the SHPO, and the Council conclude the Section 106 process; or

- decide to comment on the undertaking in which case the Council will provide its comments within 60 days of receiving the submittal from IDOT/FHWA, unless IDOT/FHWA agree otherwise.

When a Memorandum of Agreement becomes final, the undertaking must be implemented according to the terms of the Agreement. This evidences fulfillment of Section 106 responsibilities. Failure to implement the terms of a Memorandum of Agreement requires that the undertaking be resubmitted to the Council for comment.

9. Request for Comments. Where IDOT/FHWA and the SHPO cannot agree upon measures to avoid or reduce adverse effects nor agree to accept such effects, BDE will request (via FHWA) the Council's comments and provide documentation for a Request for Comments When There is No Agreement (refer to Section 26-5.04(f)).

   When the Council has commented on an undertaking, the comments shall be considered by IDOT/FHWA in reaching a final decision on the proposed undertaking. BDE will report (via FHWA) the decision to the Council prior to initiating the undertaking, if possible.

10. Discovery During Construction. Where historic properties are likely to be discovered during construction, BDE, in cooperation with the district office, will initiate action to develop a plan for the treatment of such properties if discovered. This plan will be included in the documentation prepared to comply with Items 4 through 9 above. Where such a plan is a part of the documentation leading to Section 106 compliance for the undertaking, the requirements of Section 106 concerning properties discovered during construction will be satisfied by following the plan.

    Where historic properties are discovered during construction and a plan for such sites was not included in the Section 106 compliance documentation, BDE should be contacted for guidance concerning the specific actions necessary for compliance.

11. Documentation in Environmental Report. The results of compliance actions under Section 106 shall be summarized in the environmental report for the action.

### 26-5.04(d) National Register Criteria for Evaluation

The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and:

- that are associated with events that have made a significant contribution to the broad patterns of our history; or

- that are associated with the lives of persons significant in our past; or

- that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

- that have yielded, or may be likely to yield, information important in prehistory or history.

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- a religious property deriving primary significance from architectural or artistic distinction or historical importance; or

- a building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

- a birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life; or

- a cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

- a reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

- a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

- a property achieving significance within the past 50 years if it is of exceptional importance.

**26-5.04(e) Criteria of Effect and Adverse Effect**

The following describes the criteria for determining effect and adverse effect:

1. Effect. An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register.

   For the purpose of determining effect, alteration to features of a property's location, setting, or use may be relevant depending on a property's significant characteristics and should be considered.

2. Adverse Effect. An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:

   - physical destruction, damage, or alteration of all or part of the property;
   - isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;
   - introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;
   - neglect of a property resulting in its deterioration or destruction; and
   - transfer, lease, or sale of the property.

   Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of the Section 106 regulations:

   - when the historical property is of value only for its potential contribution to archaeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted according to applicable professional standards and guidelines;
   - when the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*; or

- when the undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

### 26-5.04(f) Documentation Requirements

The following discussion stipulates the documentation required for specific findings, agreements, or requests for comments in the Section 106 compliance process. For archaeological resources, BDE ordinarily will prepare the Section 106 compliance documentation, in cooperation with the district office and FHWA. For historic or architectural resources, the district office ordinarily will prepare the documentation in cooperation with BDE and FHWA.

The Section 106 documentation applies as follows:

1. Finding of No Adverse Effect. The purpose of this documentation is to provide sufficient information to explain how IDOT/FHWA reached the finding of no adverse effect. The required documentation is as follows:

    - a description of the undertaking including photographs, maps, and drawings, as necessary;

    - a description of historic properties that may be affected by the undertaking;

    - a description of the efforts used to identify historic properties;

    - a statement of how and why the criteria of adverse effect were found inapplicable; and

    - the views of the State Historic Preservation Officer, affected local governments, Indian tribes, Federal agencies, and the public, if any were provided, and a description of the means employed to solicit those views.

2. Finding of Adverse Effect. The required documentation is as follows:

    - a description of the undertaking including photographs, maps, and drawings, as necessary;

    - a description of the efforts to identify historic properties;

    - a description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate; and

    - a description of the undertaking's effects on historic properties.

3. Memorandum of Agreement. When a Memorandum of Agreement is submitted for review according to Item #8 in Section 26-5.04(c), the documentation, in addition to that specified in Item #2 above, shall also include a description and evaluation of any proposed mitigation measures or alternatives that were considered to address the undertaking's effects and a summary of the views of the State Historic Preservation Officer and any interested persons.

4. Requests for Comment When There is No Agreement. The purpose of this documentation is to provide the Council with sufficient information to make an independent review of the undertaking's effects on historic properties as the basis for informed and meaningful comments to IDOT/FHWA. The required documentation is as follows:

- a description of the undertaking with photographs, maps, and drawings, as necessary;
- a description of the efforts to identify historic properties;
- a description of the affected historic properties with information on the significant characteristics of each property;
- a description of the effects of the undertaking on historic properties and the basis for the determinations;
- a description and evaluation of any alternatives or mitigation measures that IDOT/FHWA proposes for addressing the undertaking's effects;
- a description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection;
- documentation of consultation with the State Historic Preservation Officer on the identification and evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;
- a description of the efforts of IDOT/FHWA to obtain and consider the views of affected local governments, Indian tribes, and other interested persons;
- the planning and approval schedule for the undertaking; and
- copies or summaries of any written views submitted to IDOT/FHWA on the effects of the undertaking on historic properties and alternatives to reduce or avoid those effects.

### 26-5.04(g) Coordination

Coordination conducted by IDOT to comply with Section 106 primarily involves FHWA, the State Historic Preservation Officer, the Keeper of the National Register, and the Advisory Council on Historic Preservation. However, in the identification of historic properties and the evaluation of the effects of proposed undertakings on such properties, careful consideration should be given to information and views provided by contacts with:

- interested and affected persons;
- local governments;
- Indian tribes;
- public and private organizations; and
- applicants for or holders of grants, permits, or licenses and owners of affected lands.

When an adverse effect on historic properties is involved, such parties must be invited to participate in the Section 106 consultation process, if they request to be so involved.

## 26-5.05 Historic Bridge Memorandum of Agreement

*This Section will be prepared and distributed in the future.*

## 26-5.06 State of Illinois Requirements

*This Section will be prepared and distributed in the future.*

## 26-6 NOISE ANALYSES

### 26-6.01 Introduction

In the development of a project, it is necessary to undertake special technical analyses to identify and evaluate the potential noise impacts the project will involve. This topic prescribes procedures for these analyses and for noise abatement measures and related coordination, and it includes the noise abatement criteria prescribed by Federal regulations.

### 26-6.02 Complementary Technical Manual

The *IDOT Traffic Noise and Vibration Manual* provides technical information and technical procedures associated with the provisions of this topic. Its contents should be considered in complying with the procedures described herein.

### 26-6.03 Legal Authority

The following legal authority regulates or influences the policies and procedures for noise analyses:

- 42 USC 4901-4918, popularly known as the *Noise Control Act* of 1972 (Public Law 92-574).
- 23 USC 109(h) and (i), which are amendments to the *Federal-Aid Highway Act* of 1970 (Public Laws 93-87 and 91-605).
- 42 USC 4331 and 4332, which are portions of the *National Environmental Policy Act* of 1969 (Public Law 91-190).
- 23 CFR Part 772 “Procedures for Abatement of Highway Traffic Noise and Construction Noise”.
- “Highway Traffic Noise Analysis and Abatement — Policy and Guidance,” by the U.S. Department of Transportation, Federal Highway Administration, Office of Environment and Planning, Noise and Air Quality Branch, Washington D.C., June 1995.

### 26-6.04 Policy

Special efforts shall be made in the development of a project to comply with Federal, State, and local requirements for noise control; to consult with appropriate officials to obtain the views of the affected community regarding noise impacts and abatement measures; and to mitigate highway-related noise impacts, where reasonable and feasible.

## 26-6.05 Procedures

### 26-6.05(a) Definitions

1. Department. The Illinois Department of Transportation.

2. Existing Noise Level. The worst hourly noise level caused by existing conditions on a regular basis in a particular area. These conditions can result from any natural and mechanical sources and human activity considered to be usually present in a particular area.

3. Facility or Existing Highway. Any of the freeways, expressways, or various classes of roads and streets that make up the highway system under the jurisdiction of the Department.

4. Future Noise Level. The worst hourly traffic noise level which will occur on a regular basis, based on predicted traffic volumes within a 20-year period after the completion of construction of the new highway facility.

5. Noise Barrier. Any device which reduces the transmission of traffic noise from a highway to an adjacent receptor, including, but not limited to, earth berms, walls made from timber, masonry, concrete, composite materials, or any combination thereof.

6. Noise Level. A measured quantity of sound (i.e., oscillations of pressure in the air). The unit of measure is the decibel (dB). In evaluating highway traffic noise to apply the FHWA noise abatement criteria, the measurement of decibels is weighted to focus on the frequencies that correlate well with human subjective response [i.e., 1,000 to 4,000 Hertz (cycles per second)]. This is referred to as "A-weighting" and the A-weighted unit of measure is abbreviated as dBA.

7. Receptor. A listener located in an outdoor place where frequent human use occurs and a lowered noise level would be of benefit. In limited situations, the Department may consider listeners located inside buildings as described in the explanatory notes for Figure 26-6A.

8. Representative Receptor. An analysis site chosen to represent other like land uses. Such sites should be chosen on the basis of having similar distances to the roadway and similar traffic volumes and operating conditions. In addition, such sites should be chosen to represent locations that would experience the maximum reduction in traffic noise levels as a result of abatement measures.

9. Residence. A household unit such as a house, an apartment, or other group of rooms, or a single room that is intended for occupancy as separate living quarters.

10. Type I Project or New Highway Project. A proposed project for the construction of a State highway on new location or the physical alteration of an existing State highway which significantly changes either the horizontal or vertical alignment or increases the number of through-traffic lanes.

11. Type II Project or Retrofit Project. A proposed project for the construction of noise barriers along an existing State highway.

12. Undeveloped Lands. Those tracts of land or portions thereof which do not contain improvements or activities devoted to frequent human habitation or use (including low-density recreational use) and for which no such improvements or activities are planned or programmed.

13. Worst Hourly Traffic Noise. The noise level resulting from the highest hourly volume a facility can handle while maintaining stable flow. This traffic volume will be either the design hourly volume or the maximum volume that can be accommodated under level of service C (i.e., where high traffic volumes begin to restrict speed and drivers' maneuverability).

**26-6.05(b) Applicability**

The noise analysis and abatement procedures described in this Section shall apply to all Type I and Type II projects, whether Federally funded or State-only funded (or State and local-funded, as appropriate).

**26-6.05(c) Analysis and Reporting**

For Type I and Type II projects, the analysis and reporting of noise impacts shall be accomplished in accordance with the following:

1. Traffic Noise Analysis. In the development of proposed Type I and Type II projects, expected traffic noise impacts shall be determined and analyzed, and the overall benefits which can be achieved by noise abatement measures to mitigate these impacts shall be determined, giving weight to any adverse social, economic, and environmental effects. The level of analysis may vary from simple calculations for rural and low-volume highways to extensive analysis for high-volume, controlled-access highways in urban areas.

   The traffic noise analysis shall be conducted in the following manner:

   - Identify existing activities, developed areas, and undeveloped lands for which development is planned, designed, and programmed (i.e., for which a building

| Land Use Category | Leq(h)* | (dBA) | Description of Land Use Category |
|---|---|---|---|
| A | 57 (Exterior) | | Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose. |
| B | 67 (Exterior) | | Picnic areas, recreational areas, playgrounds, active sports areas, parks, residences, motels, hotels, schools, churches, libraries, and hospitals. |
| C | 72 (Exterior) | | Developed lands, properties, or activities not included in Categories A or B above. |
| D | -- | | Undeveloped lands. |
| E** | 52 (Interior) | | Residences, motels, hotels, public meeting rooms, schools, churches, libraries, hospitals, and auditoriums. |

* "Leq(h)" — The hourly value of Leq. Leq is the equivalent, steady-state sound level, which in a stated period of time contains the same acoustical energy as the time-varying sound level during the same period. For purposes of measuring or predicting noise levels, a receptor is assumed to be at ear height, located 5 ft (1.5 m) above ground surface.

** Use of interior noise levels shall be limited to situations where exterior noise levels are not applicable; i.e., where there are no exterior activities to be affected by traffic noise, or where exterior activities are far from or physically shielded from the roadway in a manner that prevents an impact on exterior activities.

*Note: The Noise Abatement Criteria are noise **impact** thresholds for considering abatement. (Abatement must be considered when predicted traffic noise levels for the design year approach [i.e., are within 1 decibel of] or exceed the noise abatement criteria, or when the predicted traffic noise levels are substantially higher [i.e., are more than 14 decibels greater] than the existing noise level.) The Noise Abatement Criteria are **not** attenuation design criteria or targets. The goal of noise abatement measures is to achieve a substantial reduction in future noise levels. The reductions may or may not result in future noise levels at or below the Noise Abatement Criteria.*

**NOISE ABATEMENT CRITERIA**
**(Hourly A-Weighted Sound Level - decibels (dBA))**

**Figure 26-6A**

permit has been granted, a plat plan has been filed, or other similar action has occurred) which may be affected by noise from the highway section.

- Predict the traffic noise levels for each alternative under detailed study (including the "no-action" alternative) using the current FHWA-approved traffic noise prediction method. If it is analytically determined that activities, developed areas, or lands planned for development are not sufficiently close to the proposed highway improvement to be adversely affected by the predicted traffic noise levels, further analysis, as described in the following steps, will not be necessary.

- Measure the existing noise levels for existing activities or developed land uses as described in the FHWA report "Measurement of Highway-Related Noise" (FHWA-PD-96-046, DOT-VNTSC-FHWA-96-5). Perform the noise measurements at receptor locations that are representative of the area potentially impacted by the alternatives under study (e.g., residential neighborhoods, commercial and industrial areas, parks, churches, schools, hospitals, libraries, etc., as appropriate). Measurements may not be necessary where it is clear that the existing levels are predominantly from the highway being improved and can be satisfactorily estimated using approved noise prediction methods. The purpose of this noise level information is to quantify the existing acoustic environment and to provide a basis for assessing the impact of noise level increases. The descriptor Leq (see explanatory note with Figure 26-6A) shall be used to quantify the measurements of both existing and predicted noise levels.

- Compare the predicted traffic noise levels for each alternative under detailed study with the existing noise levels and with the noise abatement criteria (Figure 26-6A). This comparison also shall include predicted traffic noise levels for the "no-action" alternative in the design year. Such information shall be used primarily to describe the noise impact of proposed highway improvements in contrast with noise levels likely to be reached in the same area if no highway improvement is undertaken. Noise impacts can be expected when the predicted traffic noise levels for the design year approach (i.e., are within 1 decibel of ) or exceed the noise abatement criteria, or when the predicted traffic noise levels are substantially higher (i.e., are more than 14 decibels greater) than the existing noise levels.

- Examine and evaluate alternative noise abatement measures [refer to 26-6.05(d)] for reducing or eliminating the noise impact on existing activities, developed lands, and undeveloped lands for which development is planned, designed, and programmed. Before project plans and specifications are approved, it must be determined that noise abatement measures determined to be reasonable and feasible have been incorporated. Because decisions on noise abatement are prerequisites to determining environmental impacts, and because these impacts influence decisions on adoption of a highway location, it is

important that a preliminary determination be made of possible noise abatement measures.

2. Documentation in Reports. Although there may be instances in which a noise analysis is conducted independent of environmental documentation for a highway project (e.g., for Type II noise abatement projects), the analysis typically is conducted concurrently with the development of an EIS or other environmental report (or Phase I engineering report, where applicable). It is important that appropriate information from the technical noise study be made a part of the environmental documentation. Therefore, careful planning should be undertaken to ensure that the technical study reaches appropriate milestones in time to incorporate summaries of the noise analysis results into the environmental documentation for circulation and comments, as appropriate.

   The summary of the noise analysis should include, but is not limited to, the following:

   - A brief description of noise sensitive areas contiguous to the project.
   - A comparison of the predicted noise levels (in decibels) with the existing noise levels and the noise abatement criteria.
   - Noise abatement measures which have been considered and those measures likely to be incorporated in the project.
   - Noise problems for which no prudent solution is reasonably available and the reasons why.

   The summaries should be of sufficient detail to provide quality information to aid decision-makers in selecting among alternatives and in understanding the impacts and proposed mitigation measures for the preferred alternative.

3. Construction Noise. The following general steps for addressing construction noise shall be performed for all Type I and Type II projects:

   - Identify land uses or activities that may be affected by noise from construction of the project. This identification must be performed during the project development studies.
   - Determine the measures recommended for inclusion in the contract plans and specifications to minimize or eliminate adverse construction noise impacts on the community. This determination shall include a weighing of the benefits to be achieved and the overall adverse social, economic, and environmental effects and the costs of the abatement measures.

- Incorporate the recommended abatement measures into the contract plans and specifications.

A construction noise analysis should determine the following:

- if there is sufficient basis (i.e., needs or benefits) for recommending early construction of proposed noise barriers, so that they might also abate construction noise; and

- if provisions for any of the following (or other) abatement measures should be incorporated into project construction contract documents:

  + requiring special construction measures (e.g., work hour limits, equipment muffler requirements, location of haul roads, elimination of "tail gate banging," reduction of backing up for equipment with alarms, use of "sound curtains" on certain equipment such as pavement breakers, placing materials stockpiles to form temporary noise barriers, positioning equipment as far as practical from sensitive areas);

  + limiting the duration of contract period (calendar date of completion); or

  + imposing limits on all construction during special events, such as outdoor concerts and athletic events.

Where construction noise is addressed in environmental reports or Phase I Engineering Reports, a statement should be included indicating that control of construction noise will be governed by the *Standard Specifications for Road and Bridge Construction* and any additional abatement measures developed specifically for the action. Where such additional abatement measures will be used, a brief description of the measures should be included.

**26-6.05(d) Noise Abatement**

1. General Considerations. Noise abatement measures are not required for lands which are undeveloped as of the date of environmental approval ( i.e., Categorical Exclusion approval or approval of a Finding of No Significant Impact or Record of Decision) for the proposed highway project unless:

   - development was planned, designed, and programmed before the highway studies were undertaken, and there is firm evidence that the development has been only temporarily delayed; or

   - development is planned, designed, and programmed during the highway project planning and design; there is a very high probability of the development being

constructed; and the developer has considered the noise impacts to the extent reasonable and practicable.

The Department may seek Federal-aid participation in the cost of providing noise abatement measures for undeveloped lands along Type I projects when a noise analysis demonstrates a need in the following situations:

- development occurs between the date of environmental approval of the proposed highway project and the actual construction of the project, or

- the probability of development occurring within a few years is very high and a strong case can be made in favor of providing noise abatement measures as part of the highway project based on consideration of need, expected long-term benefits to the public interest, and the difficulty and increased cost of incorporating abatement measures into either the highway or the development at a later date.

In determining and abating traffic noise impacts, primary consideration is to must be provided given to exterior areas. Abatement will usually be necessary only where frequent human use occurs and a lowered noise level would be of benefit.

If a noise impact is identified, the abatement measures discussed in 26-6.05(d) Item #2 below must be considered. In evaluating the reasonableness of various measures, the following items should be addressed as appropriate:

- Noise Abatement Benefits,
- Cost of Abatement,
- Views of the Residents Affected,
- Absolute Noise Levels,
- Change in Noise Levels,
- Development Along the Existing Highway, and
- Environmental Impacts of Constructing Abatement Measures.

When noise abatement measures are being considered, every reasonable effort shall be made to obtain substantial noise reductions (i.e., reductions of at least 8 decibels at a receptor).

Steps should be taken to ensure that abatement measures that are reasonable and feasible are incorporated into the plans and specifications. The Federal Highway Administration will not approve the environmental documentation or plans and specifications for Federally funded projects unless such measures are identified and incorporated to reduce or eliminate the noise impact on existing activities, developed lands, or undeveloped lands for which development is planned, designed, and

programmed as of the date of environmental approval (i.e., approval of Categorical Exclusion, Finding of No Significant Impact, or Record of Decision).

2. Noise Abatement Measures. The information in this subsection is written primarily for Federally funded projects; however, the provisions regarding conditions for providing abatement measures and information on types of measures also should be applied to appropriate State-only funded projects. All proposals for providing noise abatement measures on State-only funded projects should be submitted to BDE for review and concurrence.

For Federally funded projects, Federal funds may be used for noise abatement measures when:

- a traffic noise impact has been identified (see Item #1 in Section 26-6.05(c));
- the noise abatement measures will reduce the traffic noise impact; and
- the overall noise abatement benefits are determined to outweigh the overall adverse social, economic, and environmental effects and the costs of the noise abatement measures.

a. Type I Projects. The following noise abatement measures may be incorporated into Federally funded Type I projects to reduce highway-generated noise impacts. The costs of such measures may be included in Federal-aid participating project costs with the Federal share being the same as that for the system on which the project is located:

- traffic management measures (e.g., traffic control devices and signing for prohibition of certain vehicle types, time use restrictions for certain vehicle types, modified speed limits and exclusive lane designations);
- alterations of horizontal and vertical alignments;
- acquisition of property rights (either in fee or lesser interest) for construction of noise barriers; and
- installation or construction of noise barriers or devices (including landscaping for aesthetic purposes) within the highway right-of-way.

There may be situations where especially severe traffic noise impacts exist or are expected, and the abatement measures listed above for Type I projects are physically infeasible or economically unreasonable. In such instances, other noise abatement measures may be approved by the Federal Highway Administration on a case-by-case basis provided a traffic noise impact has been identified, the noise

abatement measures will reduce the traffic noise impact, and the overall noise abatement benefits are determined to outweigh the overall adverse social, economic, and environmental effects and the costs of the noise abatement measures.

b. Type II Projects. Type II projects will be considered only on fully controlled-access routes (freeways) within urban areas.

Proposed retrofit projects must have a State or local government sponsor; i.e., a unit of government with the authority to levy taxes. This includes general-purpose units of local government (e.g., cities, counties, townships) and plus specialized governing districts (e.g., sanitary districts, school districts). Nominated projects involving more than one of these governmental units must have support from all affected jurisdictions. The sponsoring entity must provide funding for the appropriate share of the cost of the retrofit project, as reflected in Figure 26-6B and Item #4 in Section 26-6.05(d) "Noise Abatement Wall Materials." The sponsoring entity also must provide a noise analysis in relation to the proposed noise abatement project that meets the requirements of the Illinois Department of Transportation.

If a sponsor's project is accepted, the sponsor will be responsible for providing any necessary rights-of-way on behalf of the State, and executed intergovernmental agreements addressing funding, utility relocations, and responsibilities for maintenance of the structure and appearance of the noise barrier, including assurances that advertising on the noise barrier wall will be prohibited.

For the Department to consider a proposed retrofit project for inclusion in the multi-year highway construction program, the project sponsor must furnish the Department the following:

- At the time the project is nominated for consideration:

  + A noise analysis for the proposed noise abatement project that meets the requirements of Section 26-6.05(c).

  + An ordinance adopted by the affected community(ies) formally supporting the proposal for a noise abatement barrier.

  + Documentation to verify that land-use control measures (e.g., a local zoning ordinance) are in place for the project area to provide for noise-compatible development on undeveloped land adjacent to highways and to eliminate the need for government-funded noise barriers in highway rights-of-way adjacent to future developments. Such land-use controls should prohibit noise-

sensitive land uses from being located adjacent to highways or require that such developments be planned, designed, or constructed in such a way that noise impacts are minimized.

+ Documentation of the date on which the activities and land uses abutting the proposed barrier project came into existence. (For Type II projects, Federal funds will only be available for projects that were approved before November 28, 1995, or that are proposed along lands where land development or substantial construction predated the existence of any highway. The granting of a building permit, filing of a plat plan, or a similar action must have occurred prior to right-of-way acquisition or construction approval for the original highway.)

+ Documentation of the percentage of residences and other sensitive receptors immediately adjacent to the sponsored noise abatement barrier which support its construction along with the current owner/occupants date of purchase or renter/occupants statement as to date occupancy commenced. In determining this percentage for multi-story residences, only ground floor occupants with identified outside activities will be considered.

+ The local sponsor will need to certify the availability of the appropriate local share of the construction cost of the retrofit project (refer to Figure 26-6B). Local sponsors should be aware that Federal highway program rules do not allow the use of other Federal funds to match Federal transportation funds. The sponsor cannot incur project costs for which reimbursement is sought until after the project is approved for funding by the Department and authorized by FHWA, as appropriate.

+ Assurance that the sponsor or designee will enter into agreements to assume responsibility for maintenance of the noise abatement barrier and any rights-of-way located between the noise barrier and the adjacent property lines.

- In the year programmed for construction in the State Transportation Improvement Program, and at least 75 days before the proposed bid letting date for a retrofit project:

  + Right-of-way purchase, if necessary. The local sponsor will be responsible for physical and financial right-of-way acquisition required to accommodate the noise wall and for any associated environmental clearances and relocation of utilities that may be necessary. Under this policy, the cost of purchasing rights-of-way

and real property is not an eligible project cost and therefore is not eligible for reimbursement; neither can the value of property be considered as the match required from the sponsor.

+ All necessary intergovernmental agreements, executed by all parties.

+ Any appropriate backup data and documentation on the project to satisfy Department and/or Federal audit procedures.

Noise barriers that are proposed as Type II projects are subject to available funding. Eligible Type II noise barrier projects will be evaluated, prioritized, and programmed in the highway programming process. Factors considered shall include, but not be limited to, cost of the project, date of adjacent development along the proposed noise barrier site, traffic noise levels, number of benefiting receptors, community acceptance of the proposed noise barrier, and predicted noise level reduction.

The Department will be responsible for coordinating with interested local sponsors; evaluating and prioritizing nominated projects; cooperating in the preparation and/or review of plans, specifications, and estimates; and programming eligible projects in the multi-year program. The Department is the approving body for this process and project-level funding.

As with any expenditure of Federal highway funds, Federal budgetary constraints (i.e., obligation ceilings) will control the total amount of Federal funds that are available annually. State budgetary constraints also could impact the level of projects constructed in any given year.

3. Noise Abatement Barriers. Noise abatement barriers for Type I and Type II projects shall comply with the following:

- Noise barriers shall be designed to address noise impacts to the exterior ground floor activities of abutting buildings.

- A noise barrier protecting a receptor(s) shall reduce traffic noise levels generated on the facility by a minimum of 8 decibels at the receptor(s). Construction of an effective noise barrier must be feasible and reasonable. In determining the feasibility and reasonableness of noise abatement, appropriate consideration shall be given to the June 1995 Policy and Guidance issued by the Federal Highway Administration regarding "Highway Traffic Noise Analysis and Abatement" (issued via a BDE Information Memorandum).

- The total cost of a noise barrier may not exceed $24,000 per benefited residence. For purposes of this determination, benefited residences will be those that will

experience a reduction of 5 decibels or more in the level of traffic noise as a result of the noise barrier. The Department may allow exceptions to this criterion to close gaps between two barriers, provide continuity adjacent to like land uses, extend barriers to the next natural/manmade feature or to address other significant area noise level contributors. Under these exceptions, abutting residences that will not receive a full 5 decibels in reduced traffic noise levels may be included. Land use categories other than "single family residential" shall be analyzed on a site-specific basis to determine cost effectiveness.

4. Noise Abatement Wall Materials. When the noise analysis, as described in Item #1 in Section 26-6.05(c), determines that a noise abatement wall is warranted and that it is reasonable and feasible to provide the wall, it will be constructed with a design life of 35 or more years. In addition, it will be aesthetically pleasing, consistent with any neighboring design themes, easily maintained, and replaceable, if damaged. The noise abatement wall material must be suitable for safe recycling and must achieve a sound Transmission Loss (TL) (i.e., a reduction in sound transmitted through the material) equal to or greater than 20 dB in all test frequency bands. Testing for TL shall be in accordance with ASTM E90 "Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions." Specialty items and materials that are not covered by ASTM, AASHTO, or other Department specifications must have the prior approval of the Illinois Highway Development Council.

   The Department, by consensus of its landscape architects, will select a standard brick, stone, and wood pattern for the surface texture of noise abatement walls. Three standard colors also will be selected for each pattern.

   For Type I projects, the district engineer will recommend one of the standard patterns and colors for a proposed noise abatement project unless, after evaluating existing or proposed design themes for the project area or the architectural style of the neighborhood, a different pattern or color is deemed appropriate. For Type II noise abatement projects, the project sponsor may provide recommendations for the pattern and color of the noise abatement barrier.

   The recommendation of the district engineer, or project sponsor for Type II projects, will be presented at public involvement meetings. If the affected residents, acting through their local public officials or Type II project sponsor, desire a different pattern or color, or a noise wall material that does not fully conform to this policy, the following options will apply:

   - any of the other “standard” patterns or any color on their side of the wall will be accommodated without any monetary commitment from the locals beyond that normally required for a “Standard pattern” Type I or Type II noise abatement project, as appropriate, in accordance with Figure 26-6B;

- any non-standard pattern or color on the side of the wall away from the highway will be accommodated upon agreement by the locals to compensate the Department in accordance with the cost percentages reflected in Figure 26-6B for a "Non-standard pattern" Type I or Type II noise abatement project, as appropriate; or

- proposals for construction of noise abatement walls from materials that meet the 20 dB TL requirement but that otherwise do not fully conform to this policy will be evaluated and approved by the Department on a case-by-case basis. The local funding participation required for engineering, construction, and maintenance costs associated with the wall also will be determined on a case-by-case basis.

| | Type I Projects | Type II Projects |
|---|---|---|
| Standard pattern (Noise wall material conforms to policy) | 0% local participation | Local sponsor funds 50% of total engineering and construction cost. |
| Non-standard pattern (Noise wall material conforms to policy) | Local agency funds 100% of the difference in cost over that for a Standard pattern | Local sponsor funds 100% of the difference in cost over that for a Standard pattern plus 50% of the remaining engineering and construction cost. |

**LOCAL FUNDING PARTICIPATION**
**IN NOISE ABATEMENT WALL PROJECTS**

**Figure 26-6B**

Under the following circumstances, an absorptive surface* should be considered for noise abatement walls to be constructed pursuant to this policy:

- An absorptive surface should be considered for the *roadway* side of a noise abatement wall when:

* *For purposes of this policy, a noise abatement wall surface will qualify as "absorptive" provided that it achieves a composite Noise Reduction Coefficient (NRC) of at least 0.80 if on the roadway side of the wall and a composite NRC of at least 0.65 if on the side of the wall away from the roadway. The composite NRC shall be calculated on the basis of the individual NRC values for each of the components of the total noise abatement wall system, as determined using ASTM C423 "Standard Test Method for Sound Absorption Coefficients by the Reverberation Room Method." For purposes of this testing, the materials must be placed in accordance with Type A Mounting as described in ASTM E795 "Standard Practices for Mounting Test Specimens During Sound Absorption Tests."*

+ walls (including noise abatement walls, retaining walls or abutments) paralleling or approximately paralleling the proposed noise abatement wall are located, or proposed for construction, on the opposite side of the roadway and the ratio of the "canyon" width (between the noise abatement wall and the opposing wall) to the height of the walls is 10:1 or less; or

+ the noise abatement wall is proposed to close a gap in a noise abatement barrier that has an absorptive surface on the roadway side.

- An absorptive surface should be considered for the side of the noise abatement wall *away* from the roadway when:

  + residences or other noise-sensitive receptors would be affected by reflected noise from industrial, commercial, or transportation sources on the side of the wall away from the roadway or noise from the roadway reflected off structures along the roadway; or

  + the noise abatement wall must be gapped for an access road to the residences or other noise-sensitive receptors the wall is intended to benefit; or

  + the noise abatement wall is proposed to close a gap in a noise abatement barrier which has an absorptive surface on the side away from the roadway.

Absorptive surfaces also should be considered where walls paralleling or approximately paralleling the proposed noise abatement wall are located, or proposed for construction, on the opposite side of the roadway and the "canyon" width to wall height ratio is greater than 10:1 but less than 20:1.

5. Noise Abatement Wall Maintenance. For Type I noise abatement barriers, the Department will maintain the roadway side of the noise abatement wall. When the wall is located in such close proximity to the right-of-way line that the other side of the wall cannot be maintained from the State's right-of-way, a maintenance agreement with the appropriate local agency will be pursued. If such an agreement is not reached, additional right-of-way or easements will be acquired to provide access for maintenance.

   For Type II noise abatement barriers, the local sponsor or designee will be responsible for maintaining the structure and appearance of the noise abatement barrier.

**26-6.05(e) Coordination**

Coordination with metropolitan planning organizations and with local officials (within whose jurisdiction the highway project is located) shall be undertaken for all Type I projects. Such organizations and officials shall be furnished:

- approximate generalized future noise levels (for various distances from the highway improvement) for both developed and undeveloped lands or properties in the immediate vicinity of the project, and

- information that may be useful to local communities to protect future land development from becoming incompatible with anticipated highway noise levels.

For noise barriers proposed as a part of a Type I project, the Department will ensure that entities potentially affected by the proposed noise barrier siting are made aware of and have an opportunity to comment on the proposal. In the location and environmental studies phase of project development, only the generalities of likely abatement measures will be discussed at public meetings and hearings. These generalities can include the preliminary form of barrier, location, height, length, cost, and predicted noise reduction. Published notices advertising these meetings will identify that noise abatement measures are being investigated for potential installation as a part of the proposed project. Further details concerning the proposed noise barrier will be made available for review and comment during the project design phase.

For Type II projects, the sponsoring entity must ensure that parties potentially affected by the proposed noise barrier siting are made aware of and have an opportunity to comment on the proposal. This may occur through informational meetings, in a location convenient to the locality to be affected by the siting, or through other means that would accomplish the same purpose. The sponsoring entity shall notify the Department of scheduled meetings at which affected entities will be afforded an opportunity to comment on the retrofit project. Potentially affected entities may include those owning or renting real property in the following locations:

- within 500 ft (150 m) in any direction from the proposed noise barrier; or

- within the areas directly behind the proposed noise barrier and directly across the highway from the proposed noise barrier where the existing traffic noise levels approach (i.e., are within 1 decibel of) or exceed the levels in Figure 26-6A.

## 26-7 FLOOD PLAIN FINDING (EXECUTIVE ORDER 11988)

### 26-7.01 Introduction

In the development of a Federally funded/regulated project, Executive Order 11988 imposes special requirements when the project will entail a significant flood plain encroachment. The following discussion explains the Executive Order 11988 requirements. These are in addition to IDNR Office of Water Resources flood plain permit requirements and the special hydraulic analyses associated with determining structure openings and elevations for facilities located in flood plains.

A project which will involve a significant flood plain encroachment, as defined under the Executive Order 11988 requirements, will require the preparation of an EA or EIS.

### 26-7.02 Complementary Technical Manual

The *IDOT Water Quality Manual* provides additional information and procedures to assist in fulfilling the requirements herein. The *IDOT Drainage Manual* discusses hydraulic analyses for flood plain encroachments.

### 26-7.03 Legal Authority

The following legal authority regulates or influences the policies and procedures for flood plains:

- Executive Order 11988, Flood Plain Management.
- US Water Resources Council's Flood Plain Management Guidelines for Implementing Executive Order 11988.
- US Department of Transportation Order 5650.2, Protection and Management of Flood Plains.
- Federal Highway Administration regulations on Location and Hydraulic Design of Encroachments on Flood Plains (23 CFR 650A).
- Title 92 Ill. Admin. Code 708, implementing Sections 23, 29, and 30 of the Rivers, Lakes, and Streams Act, 615 ILCS 5/23, 29a, and 30.

See Appendix C for more information.

## 26-7.04 Policy

In the development of a Federally funded/regulated project, special efforts shall be made to:

- encourage a broad and unified effort to prevent uneconomic, hazardous, or incompatible use and development of flood plains;
- avoid longitudinal encroachments, where practical;
- avoid significant encroachments, where practical;
- minimize impacts of actions which adversely affect base flood plains;
- restore and preserve the natural and beneficial flood plain values that are adversely impacted by BLRS actions;
- avoid support of incompatible flood plain development; and
- be consistent with the intent of the Standards and Criteria of the National Flood Insurance Program, where appropriate.

## 26-7.05 Procedures

### 26-7.05(a) Definitions

1. Action. Any highway construction, reconstruction, rehabilitation, repair, or improvement undertaken for Federally funded/regulated projects.

2. Base Flood. The flood or tide having a 1-percent chance of being exceeded in any given year.

3. Base Flood Plain. The area subject to flooding by the base flood.

4. Encroachment. An action within the limits of the base flood plain.

5. Minimize. To reduce to the smallest practicable amount or degree.

6. Natural and Beneficial Flood Plain Values. These include but are not limited to fish, wildlife, plants, open space, natural beauty, scientific study, outdoor recreation, agriculture, aquaculture, forestry, natural moderation of floods, water quality maintenance, and groundwater recharge.

7. Practicable. Capable of being done within reasonable natural, social, or economic constraints.

8. Preserve. To avoid modification to the functions of the natural flood plain environment or to maintain it as closely as practicable in its natural state.

9. Regulatory Floodway. The flood plain area that is reserved in an open manner by Federal, State, or local requirements (i.e., unconfined or unobstructed either horizontally or vertically) to provide for the discharge of the base flood so that the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot [300 mm]) as established by the Federal Emergency Management Agency (FEMA) for Administering the National Flood Insurance Program.

10. Restore. To reestablish a setting or environment in which the functions of the natural and beneficial flood plain values adversely impacted by the highway agency action can again operate.

11. Risk. The consequences associated with the probability of flooding attributable to an encroachment. It shall include the potential for property loss and hazard to life during the service life of the highway.

12. Significant Encroachment. A highway encroachment and any direct support of likely base flood plain development that would involve one or more of the following construction- or flood-related impacts:

    - a significant potential for interruption or termination of a transportation facility which is needed for emergency vehicles or provides a community's only evacuation route,
    - a significant risk, or
    - a significant adverse impact on natural and beneficial flood plain values.

13. Support Base Flood Plain Development. To encourage, allow, serve, or otherwise facilitate additional base flood plain development. Direct support results from an encroachment; indirect support results from an action out of the base flood plain.

**26-7.05(b) Applicability**

These procedures shall apply to all Federally funded/regulated projects which will entail encroachment or which otherwise will affect base flood plains, except for repairs made with emergency funds during or immediately following a disaster. The assessment of flood plain encroachments should be incorporated into the development and analysis of corridor and design alternatives so that flood plain impacts will not be considered in isolation from other social, economic, environmental, and engineering considerations.

**26-7.05(c) Flood Plain Studies**

Special technical studies on the practicability of alternatives to significant encroachments and longitudinal encroachments should be undertaken for all projects. Such studies shall conform to the following requirements:

1. NFIP Maps. National Flood Insurance Program (NFIP) maps, if available, and other information developed by IDOT and/or local, State, or Federal water resources and flood plain management agencies shall be used to determine whether a highway location alternative will include an encroachment.

2. E.O. 11988. The intent of Executive Order 11988 can be satisfied for many actions without documenting the exact flood plain limits. The required determination of encroachments can be accomplished without detailed study.

3. Alternatives. Flood plain studies shall include evaluation and discussion of the practicability of alternatives to any longitudinal encroachments or to any significant encroachments or any support of incompatible flood plain development.

4. Scope of Discussion. Flood plain studies shall include a discussion of the following items, commensurate with the significance of the risk or environmental impact, for all alternatives containing encroachments and for those actions which would support base flood plain development:

    - the risks (e.g., flooding risk) associated with implementation of the action;
    - the impacts on natural and beneficial flood plain values;
    - the support of probable incompatible flood plain development;
    - the measures to minimize flood plain impacts associated with the action; and
    - the measures to restore and preserve the natural and beneficial flood plain values impacted by the action.

5. Documentation. The flood plain studies shall be summarized in the project's Environmental Impact Statement (EIS) or Environmental Assessment (EA).

The following section provides guidance on the appropriate assessment and documentation for different categories of work. BDE or FHWA may require additional information on individual projects prior to design approval.

**26-7.05(d) Assessment and Documentation of Flood Plain Encroachments**

Assessments of flood plain encroachments may range from inspections resulting in certifying statements, as suggested in Categories 1 and 2, to a lengthy detailed analysis, as suggested in Category 6. Different levels of analysis have been established for different categories of projects depending upon their size, scope, and impact upon the flood plain. Each of the categories is based upon certain assumptions. If these assumptions are not totally accurate, the level of analysis should be modified so that sufficient information is contained to support the conclusions and recommendations.

The categories are:

Category 1: Projects which will not involve any work below the 100-year flood elevation. When the 100-year flood elevation is available from existing information without additional detailed analysis and it can be determined that certain projects, such as resurfacing, widening and resurfacing, and bridge deck repairs, will not involve any work below the 100-year flood elevation, it should be sufficient to state in the Report:

> *Although this project involves work within the horizontal limits of the 100-year flood plain, no work is being performed below the 100-year flood elevation and as a result this project does not encroach upon the base flood plain.*

Category 2: Projects which will not involve the replacement or modification of any drainage structures. Projects in this Category must be on an existing alignment. They may involve a change in the profile grade elevation of a magnitude normally associated with resurfacing. If a profile change is proposed, an inspection of the flood plain is required to determine if such an increase will result in a significant change in damage or risks. It is assumed that there are no known drainage problems within the limits of the project or that other factors were considered to override the need for concurrent drainage improvements. The following information should be included in the location study Report:

> *This project will not involve the replacement or modification of any existing drainage structures or the addition of any new drainage structures. As a result, this project will not affect flood heights or flood plain limits. This project will not result in any new, or increase the adverse effects of any existing, environmental impacts; it will not increase flood risks or damage; and it will not adversely affect existing emergency service or emergency evacuation routes; therefore, it has been determined that this encroachment is not significant.*

Category 3: Projects involving modification to existing drainage structures. Projects within this Category will not involve the replacement of any existing drainage structures nor the construction of any new drainage structures. It is intended to apply only to those projects which modify existing structures by such actions as extending cross-road culverts, adding headwalls, or extending existing bridge piers. Some projects involving modifications of existing drainage structures will affect flood heights and flood limits; however, such effects should be minimal. Some analysis may

be necessary to support statements concerning the insignificance of such modifications. For example, if a number of culverts will be lengthened, a typical calculation addressing the worst-case situation should be included to demonstrate the magnitude of the expected changes in backwater elevations. In addition to calculations relative to changes in capacity of existing structures, an inspection of the flood plains should be made to determine if any expected increases in flood heights could result in a significant damage not expected under current conditions. An example of this might be an existing levee which will be overtopped by even a small increase in flood heights.

A statement similar to the following, together with a summary of appropriate analyses required to support conclusions therein, should be included in the Report:

> *The modifications to drainage structures included in this project will result in an insignificant change in their capacity to carry flood water. This change will cause a minimal increase in flood heights and flood limits. These minimal increases will not result in any significant adverse impacts on the natural and beneficial flood plain values; they will not result in any significant change in flood risks or damage; and they do not have significant potential for interruption or termination of emergency service or emergency evacuation routes; therefore, it has been determined that this encroachment is not significant.*

Category 4: Projects involving replacement of existing drainage structures on existing alignment. This Category does not include those replacement projects which reduce the effective waterway opening from that which currently exists. In addition, there should be no record of drainage problems and no unresolved drainage complaints from residents in the area. The site should be inspected to determine if there are any existing conditions that would affect the usual design of the replacement structure. If these conditions are satisfied, a discussion similar to the following should be included in the Report:

> *The proposed structure will have an effective waterway opening equal to or greater than the existing structure, and backwater surface elevations are not expected to increase. As a result, there will be no significant adverse impacts on natural and beneficial flood plain values; there will be no significant change in flood risks; and there will be no significant increase in potential for interruption or termination of emergency service or emergency evacuation routes; therefore, it has been determined that this encroachment is not significant.*

When downstream flood heights are affected, the area should be inspected to determine if the anticipated increase could result in a significant impact. If no significant impacts are expected, that information should be added to the discussion above. If significant impacts are expected, the project should follow the guidelines in Category 5.

Category 5: Projects on new alignment and projects with potentially significant increases in 100-year flood water surface elevations. Projects in this Category are expected to require a hydraulic analysis to determine pipe size or waterway opening. If other factors cause consideration of a

significant change to the pipe size or waterway opening of an existing structure, an analysis will be necessary to determine the resultant change in flood heights upstream and downstream, when appropriate. In either case, the expected change in water surface elevations must be calculated to first determine the appropriate level of assessment and then to make the assessment.

Hydraulic Analysis Findings

1. Flood Water Surface Elevations Do Not Change. The Project Development Report should contain a discussion similar to that suggested in Category 3. If a new alignment is involved, it will be necessary to discuss whether or not it is likely to support incompatible flood plain development and, if support is anticipated, alternatives to that support must be discussed. New alignments will also require a determination of whether the roadway will be overtopped more than once every 100 years. If yes, the frequency and its impact should be discussed in the Report.

2. Flood Water Surface Elevations Increase Either Upstream or Downstream. The area affected must be inspected to determine the potential for significant increases in flood impacts. The inspection should identify flood receptors that may experience significant adverse impacts as a result of the anticipated increase in flood heights. The impact on those receptors should be assessed and a summary of the types of receptors likely to be affected and the degree of impact should be included in any Project Development Reports. Consultation with natural resource and flood plain management agencies should be initiated when necessary to adequately assess flood impacts. If significant adverse impacts are not predicted, the summary should be followed by a discussion similar to that suggested in the preceding paragraph and a determination that the encroachment is not significant. If significant adverse impacts on natural and beneficial flood plain values, significant increases in flood risks, or a significant increase in potential for interruption or termination of a transportation facility which is needed for emergency service or emergency evacuation routes, are predicted, then the encroachment should be considered significant and the guidelines in Category 6 followed.

When new alignments are classified as longitudinal encroachments, they should be analyzed to determine the resultant increase in flood heights, if any. The impact of the increase should be assessed in accordance with the preceding two situations. In addition the Project Development Report and accompanying environmental documentation should evaluate and discuss alternatives to the longitudinal encroachment on the flood plain.

Category 6: Significant Encroachments. Any proposed project which encroaches on a flood plain, either transversely or longitudinally, and which is predicted to result in a significant adverse impact on natural and beneficial flood plain values, a significant increase in flood risk, or a significant increase in potential for interruption or termination of emergency service or emergency evacuation routes, must be accompanied by a complete hydraulic analysis, a risk analysis, a flood plain study (Section 26-7.05(c)) and a flood plain finding (Section 26-7.05(e)). When it is determined that encroachments are significant, an EIS or EA must be prepared. When significant or longitudinal encroachments are proposed, the accompanying reports must include

consideration of alternatives that do not include such encroachments. No significant encroachment will be approved unless there is no practicable alternative.

The hydraulic analysis must provide the following information that must be included in the combined or design report:

1. For a 100-year flood frequency:

    - discharge,
    - backwater, and
    - water surface elevation before and after proposed project.

2. For the design frequency (if other than 100 years):

    - frequency,
    - discharge,
    - backwater,
    - water surface elevation before and after proposed project, and
    - waterway opening.

3. The frequency with which the highway is likely to be overtopped in 500 years or less. If over 500 years, it should be so stated. The location of the overtopping should be indicated.

The risk analysis should include an economic comparison of design alternatives using expected total costs (construction costs plus risk and damage costs) to determine the alternative with the least total expected cost to the public. The comparison shall include probable flood-related costs during the service life of the facility for highway operation, maintenance, and repair; for highway-aggravated flood damage to other property; and for additional or interrupted highway travel.

The flood plain study will require an inspection of the flood plain to determine the increase in the number of flood receptors and the increase in the damage to present flood receptors that will results from the expected increase in flood heights. Consultation with natural resource and flood plain management agencies should be initiated where necessary to adequately assess encroachments. Following the inspection and consultation, the flood plains subsection of the appropriate environmental report should be prepared including a discussion of the topics outlined in Section 26-7.05(c).

If it is concluded that there is no practicable alternative to the significant encroachment, a Flood Plain Finding as described in Section 26-7.05(e) should be prepared. This finding must be included in the environmental report and forwarded to the appropriate State and local A-95 clearinghouses. The clearinghouse copies may be included in the appendix of the regular design stage contact.

When significant encroachments are under consideration, public involvement notices published in the news media must indicate that such encroachments are being considered. All encroachments shall be identified during presentations at public hearings or meetings.

See Chapter 11 for additional information which must be considered in hydraulic reports whether or not encroachments are involved.

### 26-7.05(e) Flood Plain Finding

A proposed action that includes a significant encroachment will not be approved unless FHWA finds that the proposed significant encroachment is the only practicable alternative. This finding shall be included in the recommendation for a FONSI or in a special subsection entitled "Only Practicable Alternative Finding" within the Final EIS. This finding shall be supported by the following information:

- a reference to Executive Order 11988 and 23 CFR 650, Subpart A;
- the reasons why the proposed action must be located in the flood plain;
- the alternatives considered and why they were not practicable; and
- a statement indicating whether the action conforms to applicable State or local flood plain protection standards.

### 26-7.05(f) Coordination

Local, State, and Federal water resources and flood plain management agencies, including the IDNR Office of Water Resources (OWR), should be consulted to determine if the proposed highway action is consistent with existing watershed and flood plain management programs and to obtain current information on development and proposed actions in the affected watersheds.

Special permits are required for actions involving construction within the regulatory (100-year) floodways, as designated by the OWR, in Cook, DuPage, Kane, Lake, McHenry, and Will counties, except for those areas which are within the City of Chicago. IDOT will issue the necessary permits for Department actions (State and local) that meet State regulatory requirements for appropriate uses and allowable flood stage increases.

## 26-8 WETLANDS ANALYSES AND FINDINGS

*This Section will be prepared and distributed in the future.*

## 26-9 THREATENED AND ENDANGERED SPECIES/NATURAL AREA IMPACT ASSESSMENTS

### 26-9.01 Introduction

In the development of a project, special studies and coordination are required when the action may affect Federally-listed threatened or endangered species. Studies and coordination also are required for actions that may adversely impact State-listed species or an area included on, or published as a candidate for inclusion on, the Illinois Natural Areas Inventory. This section addresses the reporting and processing requirements for such actions.

### 26-9.02 Complementary Technical Manual

The *IDOT Ecological and Natural Resources Manual* provides additional information and procedures to assist in fulfilling the requirements herein.

### 26-9.03 Legal Authority

The following legal authority regulates or influences the policies and procedures for Threatened and Endangered Species/Natural Area Impact assessments:

- 16 USC 1536(a)-(d) of the Federal Endangered Species Act of 1973 (Public Law 93-205).
- 50 CFR 402, Procedures for Interagency Cooperation - Endangered Species Act of 1973, as Amended.
- Section 11 of the Illinois Endangered Species Protection Act (520 ILCS 10/1, et seq).

See Appendix C for more information.

### 26-9.04 Policy

In the development of a project, an assessment shall be made of the likely impacts on species of plants or animals listed at the Federal and/or State level as threatened or endangered and on State-designated Natural Areas. Every effort shall be made to minimize the likelihood of jeopardizing the continued existence of listed threatened or endangered species or the destruction or adverse modification of a Natural Area or an area of habitat which has been designated as critical habitat or essential habitat.

## 26-9.05 Federal Requirements

### 26-9.05(a) Definitions

1. Action Area. All areas to be affected directly or indirectly by the proposed action and not merely the immediate area involved in the action.

2. Biological Assessment. Information on listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation of potential effects of the action on such species and habitat.

3. Biological Opinion. The document that states the opinion of the US Fish and Wildlife Service (USFWS) on whether or not an action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

4. Conference. A process involving coordination with USFWS for actions likely to jeopardize the continued existence of proposed species, or result in the destruction or adverse modification of proposed critical habitat. The conference is to assist in identifying and resolving potential conflicts at an early stage in the planning process.

5. Critical Habitat. An area designated by USFWS as critical habitat.

6. Destruction or Adverse Modification. A direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

7. Formal Consultation. A process between USFWS and the Federal agency responsible for a proposed action that commences with the Federal agency's written request for consultation and concludes with USFWS' issuance of a biological opinion.

8. Jeopardize the Continued Existence Of. To engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

9. Listed Species. Any species of fish, wildlife, or plant which has been determined to be endangered or threatened pursuant to the Federal Endangered Species Act.

10. Major Construction Activity. A construction project (or other undertaking having similar physical impacts) which is a major Federal action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act (NEPA).

11. Proposed Critical Habitat. Habitat proposed in the Federal Register to be designated or revised as critical habitat for any listed or proposed species.

12. Proposed Species. Any species of fish, wildlife, or plant that is proposed to be listed under Section 4 of the Federal Endangered Species Act.

### 26-9.05(b) Applicability

The preparation of a Biological Assessment is required for any Federally funded/regulated "major construction activity" where listed species or critical habitat may be present in the action area, except those for which a contract for construction was entered into, or actual construction was begun, on or before November 10, 1978. A Biological Assessment also may be appropriate for other actions where listed species or critical habitat may be present and it is unclear whether they may be affected. If they may be affected, formal consultation is required.

### 26-9.05(c) Determination of Need for a Biological Assessment

As a part of the environmental survey and coordination process for a proposed undertaking, BDE will evaluate affected habitat in the action area and, as appropriate, will either:

- request from USFWS information concerning any listed or proposed species or designated or proposed critical habitat that may be present in the action area; or

- provide USFWS with written notification of species and critical habitat which has been determined, on the basis of surveys or available information, to be potentially present in the action area.

In response to the contact from BDE, USFWS will:

- provide information regarding listed or proposed species or designated or proposed critical habitat that may be present in the action area, and a list of candidate species* that may be present in the action area; or

- concur with or revise the information provided by BDE; or

* Candidate species refers to any species being considered by USFWS for listing as endangered or threatened but not yet formally proposed or listed. Candidate species are accorded no protection under the Endangered Species Act. Notification concerning each species is intended to alert agencies of potential proposals or listings. These species should be identified in the environmental report for a proposed undertaking. Also, close contact should be maintained with BDE on the disposition of the candidate species during the environmental processing of a project.

- where a list is not provided, advise whether, based on the best scientific and commercial data available, any listed or proposed species or designated or proposed critical habitat may be present in the action area.

If, as a result of the coordination with USFWS, a determination is made that no listed species or critical habitat may be present, a Biological Assessment is not required. In such cases, further consultation with USFWS on listed species or critical habitat also is not required. If it is determined that only proposed species or proposed critical habitat may be present, a Biological Assessment is not required unless the proposed listing and/or designation becomes final before the action is completed.

If the coordination with USFWS results in a determination that listed species or critical habitat may be present, a Biological Assessment should be prepared. Where proposed species or proposed critical habitat also may be present, they should be addressed in the Biological Assessment.

### 26-9.05(d) Preparation of the Biological Assessment

Biological Assessments will be prepared by or under the direction of BDE and in consultation with the IDOT district office(s) responsible for the action involved. If the proposed action may involve impacts to Critical Habitat, the guidance provided in BLE IM 1-78 “Endangered Species Act of 1973, Mitigation of Critical Habitat” will be considered. Any associated specialized environmental field studies required also will be conducted by or under the direction of BDE. The Biological Assessment for an action must be completed before any contract for construction is entered into and before construction is initiated.

There is no prescribed format for a Biological Assessment prepared pursuant to Federal requirements; however, the following items typically will be included:

- a description of the proposed undertaking; its location (including a map) and purpose; and, if available, anticipated dates for beginning and completing construction;

- the results of an on-site inspection of the action area to determine if listed or proposed species are present or occur seasonally;

- the views of recognized experts on the species at issue;

- a review of the literature and other information concerning species potentially involved with the action;

- an analysis of the effects of the action on the species (in terms of individuals and populations) and habitat required for its survival and propagation, including consideration of cumulative effects and the results of any related studies; and

- an analysis of alternatives considered for the proposed action.

The Biological Assessment must be completed within 180 days of its initiation unless a different time period is agreed upon in consultation with USFWS.

If preparation of the Biological Assessment for an action is not initiated within 90 days of the response from USFWS (indicating that listed species or critical habitat may be present), verification of the current accuracy of the species/habitat information must be accomplished with USFWS at the time the preparation of the Biological Assessment is initiated. BDE will make the necessary contacts for this verification, if required.

If a proposed action requiring a Biological Assessment is identical, or very similar, to a previous action for which a Biological Assessment was prepared, a separate Biological Assessment need not be prepared for the current action. The earlier Biological Assessment, plus any supporting data from other documents pertinent to the consultation, may be incorporated by reference into a written certification to USFWS indicating that:

- the proposed action involves similar impacts to the same species in the same geographic area;

- no new species have been listed or proposed or no new critical habitat designated or proposed for the action area; and

- the Biological Assessment has been supplemented with any relevant changes in information.

### 26-9.05(e) Processing of the Biological Assessment

The complete Biological Assessment will be coordinated with FHWA and transmitted by BDE to USFWS for review. USFWS will respond in writing within 30 days on whether it concurs with the findings of the Biological Assessment.

If the Biological Assessment indicates the action is not likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat and USFWS concurs, then a conference is not required. If it is determined the action is likely to jeopardize the continued existence of proposed species or result in the destruction or modification of proposed critical habitat, a conference is required.

If the Biological Assessment indicates there are no listed species or critical habitat present that are likely to be adversely affected by the action and USFWS concurs, then formal consultation is not required. If listed species or critical habitat are present and it is determined they are likely to be adversely affected by the action, formal consultation is required.

If required, a written request will be made by BDE to USFWS to initiate formal consultation. This request will include:

- a description of the proposed action;
- a description of the specific area that may be affected by the action;
- a description of any listed species or critical habitat that may be affected by the action;
- a description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;
- relevant reports including any Environmental Impact Statement, Environmental Assessment, or Biological Assessment prepared; and
- any other relevant available information on the action, the affected listed species, or critical habitat.

Formal consultation will be directed toward further analysis of the species and/or critical habitat involved and alternatives to the proposed action. The purpose of these analyses is to allow USFWS to develop its opinion concerning whether the action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

Formal consultation will be concluded within 90 days after its initiation unless a longer period is mutually agreed to. Within 45 days after concluding formal consultation, USFWS will provide its Biological Opinion concluding that:

- the action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a “jeopardy” biological opinion); or
- the action is <u>not</u> likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a “no-jeopardy” biological opinion).

If a “jeopardy” biological opinion is issued, USFWS must be notified of the final decision on the action (i.e., whether the action will be modified and, if so, how).

If the final decision on the action will involve a likelihood of jeopardizing the continued existence of a listed species or resulting in the destruction or adverse modification of critical habitat, the action may not proceed (under Federal approvals or with Federal funds) unless, and until, an exemption from the requirements of Section 7(a)(2) of the Endangered Species Act (which directs Federal agencies to “ensure” that their actions are not likely to “jeopardize” listed species or destroy or adversely modify critical habitat) is obtained.

The results of coordination regarding Federal endangered and threatened species and/or critical habitat should be summarized in the environmental report or Phase I Engineering Report for the action.

## 26-9.06 State Requirements

### 26-9.06(a) Definitions

1. Action. Construction, land management, or other activities that are authorized, funded, or performed in whole or in part by agencies of State and local governments and that will result in a change to the existing environmental conditions or may affect listed threatened or endangered species or their essential habitat or Natural Areas.

2. Adverse Impact. A direct or indirect alteration of the physical or biological features or the air, land, or water which may affect the survival, reproduction, or recovery of a listed species or that may diminish the viability of a Natural Area.

3. Agency Action Report. A report submitted to the IDNR for a proposed action requiring consultation. The information required to be submitted shall be sufficient to determine the presence or absence of a threatened or endangered species or Natural Area in the vicinity of the proposed action.

4. Biological Opinion. The component of the Detailed Action Report prepared by the IDNR when a valid record of an occurrence for a threatened or endangered species or Natural Area exists within the vicinity of a proposed action. This opinion will conclude whether the action will jeopardize the listed species present, destroy or adversely modify their essential habitat, or adversely modify a Natural Area.

5. Cumulative Effects. Direct and indirect effects of a proposed action(s) together with the identifiable effects of actions that are interrelated or interdependent with the action. Indirect effects are those that are caused by the action but are later in time or farther in distance. Interrelated actions are those that are a part of a larger action. Interdependent actions are those that have independent utility apart from the action.

6. Detailed Action Report. A written report that is prepared by an agency when a threatened or endangered species or Natural Area has been identified within the vicinity of a proposed action. This report shall contain sufficient information to make a judgment regarding the potential adverse impacts to a listed species or its essential habitat or a Natural Area.

7. Essential Habitat. The physical and biological environment that is required to maintain viable populations of a listed species to ensure the survival and recovery of that species.

8. Jeopardize. To engage in an action which would reduce the likelihood of the survival or recovery of a listed species or would result in the destruction or adverse modification of the essential habitat of such a species or which would result in the destruction or adverse modification of a Natural Area.

9. Listed Species. Any species of plant or animal which has been listed as threatened or endangered by the Illinois Endangered Species Protection Board or the USFWS.

10. Natural Area. Any area of land in public or private ownership which is registered under the Illinois Natural Areas Preservation Act 525 ILCS 30 or is identified in the Illinois Natural Areas Inventory.

11. Vicinity. The area surrounding the action, as determined by the life history requirements of the species of concern or proximity to a Natural Area.

**26-9.06(b) Applicability**

The pre-screening procedures discussed in Section 26-9.06(c) are applicable to all projects requiring submittal of an Environmental Survey Request pursuant to the criteria in Section 27-1.02. The procedures in the remainder of this part are applicable to all projects.

**26-9.06(c) Pre-Screening for Threatened and Endangered Species/Natural Areas**

For projects affecting only agricultural cropland or urban properties developed for residential, commercial, or industrial purposes, an Agency Action Report for threatened and endangered species/ Natural Area compliance need not be submitted to the IDNR. For all other projects meeting the applicability criteria in Section 26-9.06(b), BDE will submit an Agency Action Report to the IDNR for pre-screening against the Natural Heritage Database. The Agency Action Report will indicate the location of the proposed project and will include a map delineating the project boundaries. Within 30 days of receipt of the Agency Action Report, IDNR will provide one of the following responses:

1. If no threatened or endangered species or Illinois Natural Area Inventory sites are known to occur and fieldwork is not recommended, IDNR will sign and date the Agency Action Report and return it to BDE. BDE will provide the signed Agency Action Report to the district. This will complete consultation for State threatened and endangered species/Natural Area requirements. If the project involves other resource concerns requiring further IDNR review, the IDNR will re-screen the project against the Natural Heritage Database prior to any final action confirming satisfactory disposition of the other resource issues. The IDNR sign-off is valid for three years from the initial signature date on the Agency Action Report or from the date of final confirmation from IDNR on resolution of other resource concerns, if applicable. (See Sections 22-5.05(b) and 22-

5.05(c) for further guidance on the general principles of coordination with IDNR and requirements for follow-up coordination and reporting to maintain a valid IDNR sign-off.)

2. If listed threatened or endangered species or Illinois Natural Area Inventory sites are known to occur within the vicinity of the proposed action, IDNR will make the information regarding the resources available to BDE. IDNR also will provide recommendations on the need for further fieldwork, as applicable. BDE will initiate action to accomplish any additional fieldwork determined necessary. When completed, BDE will provide the results of the fieldwork, and the information from the IDNR, to the district. BDE also will provide a copy of the results of any additional fieldwork to the IDNR. If IDNR recommended additional fieldwork and BDE determined that the additional studies were not needed, BDE will provide documentation to IDNR to explain the reasons for not accomplishing the studies.

**26-9.06(d) Determination of Need for Detailed Action Report**

The district will consider information on threatened and endangered species/Natural Areas in evaluating potential environmental effects as development of the proposed project proceeds. The evaluation of effects on threatened and endangered species/Natural Areas should determine whether any of the following findings apply to the project:

- a listed species or Natural Area may be adversely affected within the right-of-way (existing or proposed), easements, or borrow/use areas the project will involve; or

- construction activities within the right-of-way will adversely affect wetland areas outside the right-of-way and listed species are known to occur in the wetlands; or

- noise, air quality, or water quality aspects of a project may adversely affect a listed species or Natural Area outside the right-of-way, easements, or borrow/use areas for the action.

If any of the preceding findings are applicable, a Detailed Action Report is required unless a programmatic agreement with the IDNR is in force for the resource(s) involved which addresses measures for avoidance and mitigation of adverse impacts. An example would be the restrictions on the months in which Indiana Bat nesting trees may be cut. If the resource involved is covered by a programmatic agreement and the project will comply with the agreed terms, no further coordination with IDNR is necessary for that resource.

If the district and BDE determine that the project will not adversely affect listed species or Natural Areas, a Detailed Action Report is not required.

### 26-9.06(e) Preparation of the Detailed Action Report

When a Detailed Action Report is required, it will be prepared by, or under the direction of BDE in consultation with the district office responsible for the action involved. Any associated specialized environmental studies needed also will be conducted by or under the direction of BDE. The Detailed Action Report typically will include the following components:

- the name and address of the contact person in BDE;
- a description of the proposed action, its location (including a map) and purpose and, if available, anticipated dates for beginning and completing construction;
- an analysis of the effects of the action on any Natural Area(s) present and on listed species (in terms of individuals and populations) and habitat required for their survival and propagation, including consideration of cumulative effects; and
- a discussion of any alternatives considered for the proposed action.

The Detailed Action Report may include the following additional components, when necessary to respond to specific issues or concerns regarding listed species:

- results of an on-site inspection of the area affected by the action to determine if listed or proposed species are present or occur seasonally;
- the views of recognized experts on species involved; and
- a review of literature and other pertinent information on species potentially involved with the action.

### 26-9.06(f) Processing of the Detailed Action Report

BDE will transmit the completed Detailed Action Report to the IDNR for formulation of a Biological Opinion. The Biological Opinion will address whether the action, taken with its cumulative effects, will jeopardize the listed species present or have an adverse impact on its essential habitat or cause adverse modification of a Natural Area.

Within 90 days of the date it receives the Detailed Action Report (unless an extension is mutually agreed to by IDOT and IDNR), IDNR will provide its Biological Opinion to the BDE. The Biological Opinion will result in one of the following findings:

- the action may promote the conservation of a listed species or its essential habitat or enhance the protection of a Natural Area, in which case the consultation process for endangered species/Natural Areas is concluded;

- the action is not likely to jeopardize a listed species or its essential habitat or cause adverse modification of a Natural Area, in which case the consultation process for endangered species/Natural Areas is concluded; or

- the proposed action is likely to jeopardize a listed species or its essential habitat or cause adverse modification of a Natural Area, in which case the consultation process will continue. In this case, IDNR generally will include recommendations in the Biological Opinion on how the impacts to the listed species/Natural Area could be avoided or minimized.

If the Biological Opinion concludes that an action is likely to jeopardize a listed species or its essential habitat or cause the adverse modification of a Natural Area, IDOT and IDNR will have 45 days, commencing on the date IDOT receives the Biological Assessment, in which to attempt to satisfactorily resolve the adverse effects on the listed species/Natural Area. If satisfactory resolution is reached within the 45-day period, IDNR will provide a sign-off indicating compliance with the requirements of the Illinois Endangered Species Protection Act and the Illinois Natural Areas Preservation Act. If resolution is not reached within the 45-day period, one of the following will occur:

- the consultation process will end and will be classified as having failed or partially failed to protect the resource(s) involved; or

- IDOT and IDNR may decide to elevate the matter within each agency* ; or

- upon mutual agreement by both parties, negotiations may continue.

When agreement is reached on the satisfactory resolution of adverse impacts to listed species or Natural Areas, IDNR will provide a sign-off to IDOT indicating compliance with threatened and endangered species/Natural Area requirements. The IDNR sign-off for threatened and endangered species/Natural Area requirements is valid for three years from the date of issuance. If the project involves other resource concerns requiring further IDNR review, the IDNR will re-screen the project against the Natural Heritage Database prior to any final action confirming satisfactory disposition of the other resource issues. In such cases, the validity period will be reset to extend for three years from the date of resolution of the other issues, provided no "Special Circumstances," as described in Section 26-9.06(g), apply.

* *It is desirable that disagreements which arise be resolved quickly and at the lowest possible level of agency involvement. For most actions, disagreements should be resolved by middle- or upper-level management of IDNR and IDOT. However, where there is failure to reach agreement, it may be necessary to refer the matter to the IDNR Director and IDOT Secretary for resolution.*

### 26-9.06(g) Special Circumstances

Consultation will be initiated, or a terminated consultation process will be reopened, if any of the following circumstances apply:

- new information reveals effects of the proposed action that may adversely affect a listed species or its essential habitat or a Natural Area in a manner not previously considered; or

- the proposed action is subsequently modified such that it may adversely affect a listed species or its essential habitat or a Natural Area in a manner which was not considered in the consultation process; or

- additional listed species or their essential habitat or Natural Areas are identified within the vicinity of the action.

### 26-9.07 Coordination of Federal/State Requirements

Where a species involved with an action is listed at both the Federal and State level, the Biological Assessment (Federal) and Detailed Action Report (State) prepared for the action will be processed concurrently with USFWS and IDNR as practical. Although processing may be concurrent and the results of consultation with either agency may be considered by the other, the Federal and State requirements are independent; both must be satisfied when species are on both the Federal and State lists.

## 26-10 EVALUATIONS OF FARMLAND CONVERSION IMPACTS

### 26-10.01 Introduction

In the development of a project, consideration must be given to the impacts that the action will cause in the conversion of farmland to non-farm uses. Under certain circumstances, coordination must be initiated with the US Department of Agriculture, Natural Resources Conservation Service (NRCS) and/or the Illinois Department of Agriculture (IDOA) to evaluate the impacts on farmland and obtain the views of those agencies on alternatives to the proposed action. This section discusses the criteria and procedures for accomplishing the necessary coordination with NRCS and IDOA.

### 26-10.02 Legal Authority

The following legal authority regulates or influences the policies and procedures on farmland conversions:

- 7 USC 4201-4209, Farmland Protection Policy Act of 1981 (Public Law 97-98).
- 7 CFR 658, Farmland Protection Policy.
- Farmland Preservation Act, 505 ILCS 75/1 et seq.
- State Executive Order No. 4 (1980), Preservation of Illinois Farmland.
- Illinois Department of Transportation, Agriculture Land Preservation Policy.
- Cooperative Working Agreement between the Illinois Department of Agriculture and the Illinois Department of Transportation on Farmland Preservation.
- Title 8, Ill. Admin. Code 700, Farmland Preservation Act.

See Appendix C for more information.

### 26-10.03 Policy

In the development of a project, an evaluation shall be made of the action's effects on conversion of farmland to non-farm use. Coordination shall be undertaken with NRCS and/or IDOA, as appropriate, to obtain their views on any anticipated farmland conversion. This evaluation and coordination with NRCS and IDOA shall be accomplished in conformance with Federal and State statutes, regulations, Executive Orders, and IDOT agreements concerning farmland. Consideration shall be given to alternatives that could lessen adverse impacts to farmland. As

practical, proposed actions shall be developed to be compatible with State, local government, and private programs and policies to protect farmland.

## 26-10.04 Federal Requirements

### 26-10.04(a) Definitions

1. Farmland. Prime or unique farmlands, as defined in Section 1540(c)(1) of the Farmland Protection Policy Act, or farmland that is determined by the appropriate State or unit of local government agency or agencies with concurrence of the Secretary of Agriculture to be farmland of Statewide or local importance. "Farmland" does not include land already in or committed to urban development or water storage. Farmland "already in" urban development or water storage includes all such land with a density of 30 structures per 40-acre (16-ha) area. Farmland already in urban development also includes lands identified as "urbanized area" (UA) on the Census Bureau Map, or as urban area mapped with a "tint overprint" on the USGS topographical maps, or as "urban-built-up" on the USDA Important Farmland Maps. Areas shown as white on the USDA Important Farmland maps are not "farmland" and, therefore, are not subject to the Act. Farmland "committed to urban development or water storage" includes all such land that receives a combined score of 160 points or less from the land evaluation and site assessment criteria.

2. Site. The location(s) that would be converted by the proposed action(s).

### 26-10.04(b) Applicability

A project which requires additional right-of-way outside any corporate limits must be coordinated with NRCS unless any one of the following apply:

1. There are no Federal funds involved in the project.

2. None of the land to be acquired is prime farmland or farmland of Statewide or local importance.

3. The land to be acquired is in urban development (i.e., has a minimum current density of 30 structures [permanently affixed to the ground] per 40-acre (16-ha) tract).

4. The project is exclusively for widening and resurfacing and does not involve borrow areas, mitigation sites, or new alignment in which the right-of-way diverges from and is not contiguous to the existing right-of-way.

5. The project is within the official 1.5-mile (2.4-km) planning area of an incorporated municipality. To be an "official" planning area, the incorporated municipality must have an adopted comprehensive plan on file with the Municipal Clerk. If a district wishes to use the

exemption for areas within an “official” planning area, the district must verify and document in the environmental information for the project that the municipality in question has adopted a comprehensive plan addressing the 1.5-mile (2.4-km) planning area and that the plan is on file with the Municipal Clerk.

6. The project is nonlinear (e.g., bridge or intersection improvements) and requires acquisition of no more than ten acres (four hectares) of land. This threshold applies to nonlinear projects other than new rest areas and new truck weigh stations. All new rest area and truck weigh station projects must be coordinated with NRCS, regardless of the amount of acquisition involved. When the area of right-of-way for the project approaches the ten-acre (four-hectare) threshold for coordination and the project will likely involve additional acquisition for borrow or mitigation, the project should be coordinated with NRCS. Anticipated sites for borrow and mitigation should be indicated if known.

7. The project is linear; requires acquisition of no more than three acres of land per project mile (0.75 ha of land per project kilometer) (area of acquisition divided by project length); and does not involve alternative alignment(s) in which the right-of-way diverges from, and is not contiguous to, the existing right-of-way. When the amount of right-of-way to be acquired approaches the three acres per project mile (0.75 ha per project kilometer) threshold for coordination and the project will likely involve additional acquisition for borrow or mitigation, the project should be coordinated with NRCS. Anticipated sites for borrow and mitigation should be indicated if known. For projects that include portions both within and outside of the official 1.5-mile (2.4-km) planning area of an incorporated municipality, the portions of the project within such planning area should be excluded for purposes of computing the acres (hectares) of acquisition per mile (kilometer). If such projects are determined to require coordination, figures should be provided for the area of proposed acquisition and the length of the improvement both within and outside of the planning area. Only that portion of the project that is located outside of the official (1.5-mile (2.4-km) planning area will be subject to review and comment by NRCS. The information on the portion of the project within the official 1.5-mile (2.4-km) planning area is provided to NRCS for information only.

The categories of projects addressed by these items have been programmatically addressed in consultations with NRCS, and a general Form AD-1006 (refer to Section 26-10.04(d)) has been prepared for these actions. The general Form is available in the IDOT district offices or may be obtained from BDE. Further project-specific review by NRCS on these projects ordinarily will not be necessary. Refer to Section 26-10.04(c) for further discussion of requirements for these types of actions.

If there is a question on whether any of the above conditions are met, BDE shall be contacted for a determination of applicability.

**26-10.04(c) Procedures**

The following will apply:

1. NRCS Coordination. For all projects requiring coordination with NRCS according to the criteria in Section 26-10.04(b), contact with NRCS should be made as early in the project development process as practical. The initial contact should be made with the State Office of the NRCS in Champaign. Form AD-1006 must be forwarded to the NRCS Office as part of the coordination process as soon as sufficient information is available. Coordination may be initiated prior to completion of the forms, as appropriate.

2. Minor Impacts. Where a project appears to be covered by Item #'s 6 and 7 in Section 26-10.04(b), care should be taken to ensure that the project does not involve more than minor impacts on farmland and that there are no unusual circumstances that would make the criteria described inapplicable to the project. If more than minor impacts on farmland are involved or if unusual circumstances are present, coordination should be initiated with NRCS as discussed in Item #1 above.

   If such impacts/circumstances are not involved, documentation should be included in the project file indicating the applicability of the criterion in Section 26-10.04(b) as the basis for not coordinating with NRCS. A copy of the general Form AD-1006 for these projects also should be included in the file. An appropriate paragraph such as the following should be included in the Phase I Engineering Report or environmental report, as appropriate:

   > *The impact of this project on farmland conversion has been evaluated in accordance with the requirements of the US Natural Resources Conservation Service (NRCS). The project will convert 3 acres or less of farmland per mile (0.75 hectares or less of farmland per kilometer) and the conversion will not result in more than minor impacts. Accordingly, the project conforms to the general Form AD-1006 prepared by NRCS. Therefore, further coordination with NRCS on this project will not be necessary.*

**26-10.04(d) Form AD-1006**

The following will apply:

1. Districts should complete Parts I and III of Form AD-1006 and submit it to the State NRCS office when information is submitted to IDOA in accordance with State farmland protection requirements (refer to Section 26-10.05(c)). NRCS will complete Parts II, IV, and V and will then send the Form to IDOA for completion of the Site Assessment portions of the Form. When completed, IDOA will return the Form to the district.

2. Form AD-1006 is the primary means of coordination with NRCS. It may, however, be supplemented with other information. It is recommended that a copy of the information sent to IDOA (refer to Section 26-10.05(c)) be sent to NRCS with Form AD-1006. The additional information will help to expedite the review and minimize turnaround time. An informational copy of the completed AD-1006 form should be provided to IDOA when it is submitted to NRCS.

3. On new construction and reconstruction projects, early contacts with the local field offices and the Statewide office of NRCS are recommended. This will notify NRCS of the project and allow early comments while maximum flexibility still exists. Form AD-1006 can follow later as project development permits. In this manner, substantive comments are discovered early and the potential for major changes in the later stages of project development will be reduced.

4. Copies of and instructions for completing Form AD-1006 are available in the IDOT district offices and may be obtained from BDE. See Section 26-10.04(f) for an example of a completed form.

AD-1006 forms for single-county projects should not be sent to NRCS county field offices. AD-1006 forms for single and multi-county projects should be sent to the State NRCS office at the following address:

United States Department of Agriculture
Natural Resources Conservation Service
Attention: State Soil Scientist
1902 Fox Drive
Champaign, Illinois 61820

The telephone number for the State NRCS office is (217) 398-5286.

### 26-10.04(e) Siting Requirements

Sites or alternatives with the highest combined scores (determined on Form AD-1006) should be regarded as most suitable for protection from conversion to non-farm use, and sites/alternatives with the lowest scores as least suitable for such protection. Sites or alternatives receiving total scores of 175 or fewer points require only minimal consideration for protection from conversion, and no additional sites/alternatives need be evaluated. Sites or alternatives with scores of 176 to 225 points are in the moderate range for consideration of protection from conversion. At least one build alternative should be considered for such projects. Sites or alternatives receiving scores over 225 points should receive the highest priority for protection from conversion to non-farm uses. For such sites or alternatives, consideration should be given to other alternatives such as rehabilitation of existing facilities and alignments that use lesser amounts of farmland.

The *Federal Farmland Protection Policy Act* regulations provide that:

> *If, after consideration of the adverse effects and suggested alternatives, the applicant wants to proceed with the conversion, the Federal agency may not, on the basis of the Act or these regulations, refuse to provide the requested assistance.*

Therefore, alternatives which adversely affect agriculture may be recommended, but only after full consideration of adverse effects and less damaging alternatives. The coordination with NRCS will ensure the adequacy of that consideration.

The results of coordination with NRCS should be summarized in the environmental report or Phase I Engineering Report for the action.

### 26-10.04(f) Notification of Selected Alternative

NRCS requires that, when a Federally funded project has one or more alternatives which require acquisition of farmland subject to the FPPA and is not otherwise exempted from the requirement to submit Form AD-1006, the project agency should provide NRCS a copy of the Form AD-1006 indicating the project alternative selected for implementation. Upon receiving design approval for such projects, the district shall inform the State NRCS office of which alternative was selected for implementation. The district should use a copy of the previously coordinated Form AD-1006 for providing this notification. The district should complete the parts of the Form entitled "Site Selected" (enter appropriate site identification letter from the AD-1006) and "Date of Selection" (use design approval date) and should then send one copy to the State NRCS office at the address provided in Section 26-10.04(d). To aid NRCS in its record keeping, note on the top of the Form that it is a "Final Decision Notification." Figure 26-10A provides an example. *Note: Figure 26-10A illustrates an example of a Form which was originally submitted to NRCS and was subsequently marked-up manually to identify the selected alternative.*

## 26-10.05 State Requirements

### 26-10.05(a) Definitions

1. Agricultural Land or Farmland. All land in farms including cropland, hayland, pastureland, forestland, corrals, gardens, and orchards; land used for farmsteads, buildings, barns, and machinery sheds; adjacent yards or corrals, pens, waste lagoons, feedlots, farmstead or feedlot windbreaks, grain bins, lanes for farm residences and fields, field windbreaks, ponds, commercial feedlots, greenhouses, nurseries, broiler facilities, and farm landing strips.

Final Decision Notification

U.S. Department of Agriculture

# FARMLAND CONVERSION IMPACT RATING

| | |
|---|---|
| **PART I** *(To be completed by Federal Agency)* | Date Of Land Evaluation Request: January 1, 1992 |
| Name Of Project: FAP 000 | Federal Agency Involved: FHWA |
| Proposed Land Use: New Highway | County And State: Adams and Hancock Counties, Illinois |
| **PART II** *(To be completed by SCS)* | Date Request Received By SCS: |

Does the site contain prime, unique, statewide or local important farmland? Yes ☒ No ☐ *(If no, the FPPA does not apply – do not complete additional parts of this form).*

Acres Irrigated: 0 | Average Farm Size: 321 acres

Major Crop(s): Corn, Soybeans, Wheat

Farmable Land In Govt. Jurisdiction: Acres: 31,200,000 % 87.6

Amount Of Farmland As Defined in FPPA: Acres: 31,200,000 % 87.6

Name Of Land Evaluation System Used: Statewide

Name Of Local Site Assessment System: Statewide

Date Land Evaluation Returned By SCS:

| PART III *(To be completed by Federal Agency)* | Alternative Site Rating | | | |
|---|---|---|---|---|
| | Site A | Site B | Site C | Site D |
| A. Total Acres To Be Converted Directly | 1022 | 1034 | 1040 | |
| B. Total Acres To Be Converted Indirectly | 0 | 0 | 0 | |
| C. Total Acres In Site | 1022 | 1034 | 1040 | |
| **PART IV** *(To be completed by SCS)* Land Evaluation Information | | | | |
| A. Total Acres Prime And Unique Farmland | 754.1 | 801.3 | 812.2 | |
| B. Total Acres Statewide And Local Important Farmland | 703.4 | 191.3 | 187.4 | |
| C. Percentage Of Farmland In County Or Local Govt. Unit To Be Converted | 0.000032 | 0.000033 | 0.000033 | |
| D. Percentage Of Farmland In Govt. Jurisdiction With Same Or Higher Relative Value | 35.5 | 35.5 | 35.5 | |
| **PART V** *(To be completed by SCS)* Land Evaluation Criterion Relative Value Of Farmland To Be Converted *(Scale of 0 to 100 Points)* | 128 | 129 | 129 | |
| **PART VI** *(To be completed by Federal Agency)* Site Assessment Criteria *(These criteria are explained in 7 CFR 658.5(b)* | Maximum Points | | | |
| 1. Area In Nonurban Use | | | | |
| 2. Perimeter In Nonurban Use | | | | |
| 3. Percent Of Site Being Farmed | | | | |
| 4. Protection Provided By State And Local Government | | | (SITE ASSESSMENT | |
| 5. Distance From Urban Builtup Area | | | CORRIDOR FACTORS | |
| 6. Distance To Urban Support Services | | | ON SEPARATE SHEET) | |
| 7. Size Of Present Farm Unit Compared To Average | | | | |
| 8. Creation Of Nonfarmable Farmland | | | | |
| 9. Availability Of Farm Support Services | | | | |
| 10. On-Farm Investments | | | | |
| 11. Effects Of Conversion On Farm Support Services | | | | |
| 12. Compatibility With Existing Agricultural Use | | | | |
| TOTAL SITE ASSESSMENT POINTS 150* | ~~160~~ | 52 | 56 | 80 | |
| **PART VII** *(To be completed by Federal Agency)* | | | | |
| Relative Value Of Farmland *(From Part V)* 150* | ~~100~~ | 128 | 129 | 129 | |
| Total Site Assessment *(From Part VI above or a local site assessment)* 150* | ~~160~~ | 52 | 56 | 80 | |
| TOTAL POINTS *(Total of above 2 lines)* 300* | ~~260~~ | 180 | 185 | 209 | |

Site Selected: A | Date Of Selection 9/1/94 | Was A Local Site Assessment Used? Yes ☒ No ☐

Reason For Selection

* When using the State Site Assessment Corridor Factors, 150 points are assigned to the land evaluation portion and 150 points are assigned to the site assessment portion, for a maximum score of 300 total points.

*(See Instructions on reverse side)*

Form AD-1006 (10-83)

**FARMLAND CONVERSION IMPACT RATING**

**Figure 26-10A**

2. Agricultural Land Conversion. The taking of land directly out of agricultural production or displacing it by another use and not returning it to production.

3. Land Class. One of eight classes of land in the Land Capability Classification System (Handbook 210, issued September 1961, and approved for reprinting January, 1973) as developed by the Soil Conservation Service, United States Department of Agriculture. Incorporation by reference does not include any future editions or amendments. The land capability classification shows, in a general way, the suitability of soils for most kinds of field crops. The soils are grouped according to their limitations for field crops, the risk of damage to the soil if they are used for crops, and the way they respond to management.

4. Modern Soil Survey. A document published after 1965 by SCS or NRCS containing a description of a county's soils, maps showing their distribution, and discussions concerning their behavior and adaptability.

**26-10.05(b) Applicability**

Coordination with the IDOA is required for State highway and bridge projects funded in whole or in part with State funds and which require additional right-of-way, *unless* any of the following apply:

1. The project is located within the boundaries of an incorporated municipality.

2. The project is within the official 1.5 mile (2.4 km) planning area of an incorporated municipality. To be an "official" planning area, the incorporated municipality must have an adopted comprehensive plan on file with the Municipal Clerk. If a district wishes to use the exemption for areas within an "official" planning area, the district must verify and document in the environmental information for the project that the municipality in question has adopted a comprehensive plan addressing the 1.5 mile (2.4 km) planning area and that the plan is on file with the Municipal Clerk.

3. The project is nonlinear (e.g., bridge or intersection improvements) and requires acquisition of no more than ten acres (four hectares) of land. When the area of right-of-way for the project approaches the ten-acre (four-hectares) threshold for coordination and the project will be likely to involve additional acquisition for borrow or mitigation, the project should be coordinated with IDOA. Anticipated sites for borrow and mitigation should be indicated if known.

4. The project is linear; requires acquisition of no more than three acres of land per project mile (0.75 ha per project kilometer) (area acquisition divided by project length); and does not involve alternative alignment(s) in which the right-of-way diverges from, and is not contiguous to, the existing right-of-way. When the amount of right-of-way for the project approaches the threshold for coordination and the project will likely involve additional acquisition for borrow or mitigation, the project should be coordinated with the IDOA. Anticipated sites for borrow and mitigation should be indicated if known. For projects that

include portions both within and outside of the official 1.5-mile (2.4-km) planning area of an incorporated municipality, the portions of the project within such planning area should be excluded for purposes of computing the acres of acquisition per mile (hectares of acquisition per kilometer). If such projects are determined to require coordination, figures should be provided for the area of proposed acquisition and the length of the improvement both within and outside of the planning area. Only that portion of the project that is located outside of the official 1.5-mile (2.4-km) planning area will be subject to review and comment by IDOA. The information on the portion of the project within the official 1.5-mile (2.4-km) planning area is provided to IDOA for information only.

**26-10.05(c) Procedures**

General

IDOA is especially interested in projects which consider more than one alignment, each of which has different agricultural impacts and different amounts of farmland conversion. Projects with multiple alignments can be as localized as those developed to eliminate offset intersections or as widespread as those for a new freeway connecting distant cities. In all cases, however, only that information which is likely to influence a choice among alternatives should be gathered and considered. For 3R/spot improvements with multiple alignments, soils information should be included when modern soil surveys are available. If modern soil surveys are not available, the remaining coordination information should be forwarded to IDOA. If it is determined that soils information is necessary, IDOA will normally acquire such information. Studies of alternative freeway alignments between distant points should consider a multitude of factors, and soil class/type should be among them because the scope of the project alternatives will likely encounter soils of varying qualities. On new construction/reconstruction projects, IDOT will acquire all soils information.

Where a proposed project will convert farmland to non-farm use, consideration should be given to measures which could mitigate the scope and impacts of the conversion. In cases where coordination with IDOA is required, this coordination will assist in the identification and evaluation of possible mitigation measures. In all other instances, the IDOT district office should ensure that measures to minimize farmland conversion impacts are appropriately identified and considered.

Project information being furnished the IDOA for review should be addressed as follows:

Illinois Department of Agriculture
Bureau of Land and Water Resources
Office of Farmland Protection and Mined Land Reclamation
P. O. Box 19281
Illinois State Fairgrounds
Springfield, Illinois 62794-9281

When IDOA has completed its review, it will respond in writing to the agency which submitted the information. Early and complete submittals will generally result in a timely response. Should the IDOA response contain substantive comments or raise controversial issues, such comments and issues should be addressed to the extent that the information is available and a response forwarded expeditiously to IDOA. Remaining comments should then be addressed as soon as the necessary information becomes available. Additional follow-up coordination may be required to determine if mutually satisfactory solutions exist prior to assuming a Departmental position at a hearing or in draft and final environmental documents.

The results of the evaluations of farmland conversion impacts, mitigation measures, and associated coordination with IDOA should be summarized in the project's environmental report or Phase I Engineering Report, as appropriate.

The discussions below identify specific procedures for projects involving construction or reconstruction and for 3R projects. If coordination with IDOA is necessary and it is unclear whether the project is 3R or reconstruction, the information required for a 3R project should be provided to IDOA as early in project development as practical. When offered an early opportunity to review project information, IDOA can make an initial determination of its degree of interest and request follow-up information, if appropriate, without delaying the project unduly.

New Construction or Reconstruction Projects

When coordination with IDOA is required, the timing of the coordination and the information provided is important. When new construction or reconstruction is involved, it is appropriate, shortly after location and/or environmental studies have been initiated, to notify IDOA that a project is being studied and that more detailed information will follow as it is developed. On such major projects, it is desirable to maintain contact with IDOA so that potential problems can be identified early to minimize any delays. This may be accomplished through IDOA attendance at scheduled district coordination meetings and/or recurring written communications providing information contained in the list below. It is also appropriate to include IDOA on the recipient list for public hearing/meeting notices.

On new construction and reconstruction projects, the description, purpose, and scope of each proposed project shall be provided IDOA together with the following information for each alternative:

1. The location, including proposed right-of-way lines if scale permits, on all the following maps:

    - a general county highway map,
    - a plat map, and
    - a modern soil survey map (if available).

2. Total land area in acres (hectares) required for additional right-of-way (includes frontage and access roads).

3. The number of acres (hectares) of each USDA Land Capability Classification (Land Classes I - VIII) and Soil Type (including index number) proposed for acquisition, if applicable.

4. Identification of all soil types occurring within the proposed right-of-way and the number of acres (hectares) of each soil type, if applicable. *Note: Land Class and soil type are obtainable from a county's modern soil survey which may be obtained from a local NRCS field office*.

5. Indication of each alternative's conformance with the appropriate zoning ordinance and comprehensive land-use plan (regional, county, or city) regulating the project area, if applicable.

6. Identification of the following impacts that may be associated with the implementation of the project, as applicable:

   - number of farm units and owners affected;
   - number of farm parcels severed;
   - number of farm unit operations severed;
   - number of landlocked parcels created;
   - miles (kilometers) of adverse travel created for each affected farm unit;
   - effects of the proposal upon existing farm drainage systems (surface and subsurface);
   - acres (hectares) of farmland required for borrow and location of the borrow site (depicted on a soil survey and plat map), if available; and
   - erosion control techniques to be utilized on the disturbed area during and after project construction.

7. A brief discussion of all measures included to mitigate any adverse impacts identified in Item #'s 1 through 6.

8. Indication that farmland conversion has been minimized and other appropriate mitigation included for the selected alternative consistent with the operational and safety requirements applicable to the project.

3R Projects

When coordination is necessary and the proposed improvement primarily involves 3R work on existing alignment, it is appropriate, shortly after location and/or environmental studies have been initiated, to notify IDOA that a project is being studied and to provide the following information:

1. Description, purpose, and scope of the proposed project.

2. Map depicting the location of the project. A county highway map is acceptable.

3. Total land area in acres (hectares) required for additional right-of-way and a brief description of its nature; for example, a 10-ft (3-m) strip on north side or a three-acre (one-hectare) parcel to flatten curve at location noted on map.

4. Indication that farmland conversion has been minimized and other appropriate mitigation included for the selected alternative consistent with the operational and safety requirements applicable to the project.

The results of coordination with IDOA should be summarized in the environmental report or Phase I Engineering Report for the action.

### 26-10.05(d) Coordination

IDOA should be invited to all district coordination meetings. The invitation should include the meeting notice and agenda.

### 26-10.06 Relationship of Federal and State Requirements

Requirements for coordination with the US Natural Resources Conservation Service (NRCS), although similar to those for the Illinois Department of Agriculture (IDOA), are separate and distinct. Coordination with IDOA does not preclude the need to coordinate with NRCS. Projects which require coordination with NRCS will normally also require coordination with IDOA.

## 26-11 AIR QUALITY CONFORMITY DOCUMENTATION

### 26-11.01 Background

Section 176(c)(4) of the Clean Air Act Amendments of 1990 requires that transportation plans, programs, and projects which are funded or approved under Title 23 USC must be determined to conform with State or Federal air implementation plans. Such implementation plans describe how air quality standards will be achieved in those areas of a State in which standards are being exceeded. Conformity to an implementation plan is defined in the Clean Air Act as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards. Federal activities may not cause or contribute to new violations of air quality standards, exacerbate existing violations, or interfere with the timely reduction of emissions as reflected in the State implementation plan. The implementing regulations for determining conformity of transportation projects (40 CFR Part 93, "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 USC or the Federal Transit Act") also impose requirements upon "regionally significant projects" * in nonattainment areas regardless of whether those projects involve Federal funding or approvals.

Illinois includes areas in which standards are being exceeded for one or more of the air pollutants for which the US Environmental Protection Agency (USEPA) has established such standards (referred to as "criteria pollutants"). Transportation-related criteria pollutants include Ozone ($O_3$), Carbon Monoxide (CO), Nitrogen Dioxide ($NO_2$), and particles with an aerodynamic diameter less than or equal to a nominal 10 microns [$PM_{10}$]. Precursors of these pollutants also are considered in regional air quality analyses for nonattainment areas. These precursors include volatile organic compounds [VOC] and oxides of nitrogen [$NO_x$] in ozone areas; $NO_x$ in $NO_2$ areas; and VOC and $NO_x$ in $PM_{10}$ areas.

BDE will disseminate information to all districts regarding the location, boundaries, and applicable criteria pollutant(s) for nonattainment areas in Illinois. Updates to this information will be issued as changes are published in the Federal Register.

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* *Regionally significant projects" means transportation projects (other than exempted projects) that are on facilities which serve regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.*

## 26-11.02 Applicability

The following procedures are applicable to all State highway projects funded or approved by the Federal Highway Administration under Title 23 USC and to "regionally significant projects" in nonattainment areas, regardless of whether such projects are Federally funded or approved under Title 23.

## 26-11.03 Procedures

### 26-11.03(a) Determining Project Involvement with Designated Nonattainment Areas

In the preparation of environmental documentation for projects subject to these procedures, districts should review the most recent information from BDE regarding those areas of Illinois that have been designated as nonattainment for one or more of the criteria pollutants. If the proposed improvement is partially or completely within a designated nonattainment area it will be subject to the conformity requirements unless the type of work involved is exempted (refer to the following section). *The USEPA rules do not currently require conformity determinations for projects outside of nonattainment areas (i.e., within attainment areas).*

### 26-11.03(b) Determining Whether Project is Exempt from Conformity Requirements

The USEPA conformity rules for transportation projects exempt the project types listed below from the requirement for a conformity determination. The determination of whether a particular action is exempt from the conformity requirement, in most cases, is made during the development of the Transportation Improvement Program (TIP) prior to the initiation of Phase I planning. Note that a particular project of a type listed is not exempt if the Metropolitan Planning Organization, in consultation with other agencies, the EPA, and FHWA, concurs that it has potentially adverse emissions impacts for any reason.

**Exempt Projects:**

1. *Safety*

- Railroad/highway crossing.
- Hazard elimination program.
- Safer non-Federal-aid system roads.
- Shoulder improvements.
- Increasing sight distance.
- Safety improvement program.
- Traffic control devices and operating assistance other than signalization projects.
- Railroad/highway crossing warning devices.
- Guardrails, median barriers, crash cushions.

- Pavement resurfacing and/or rehabilitation.
- Pavement marking demonstration.
- Emergency relief.
- Fencing.
- Skid treatments.
- Safety roadside rest areas.
- Adding medians.
- Truck climbing lanes outside urbanized areas.
- Lighting improvements.
- Widening narrow pavements or reconstructing bridges (no additional travel lanes).
- Emergency truck pullovers.

2. *Air Quality*

- Bicycle and pedestrian facilities.

3. *Other*

- Specific activities which do not involve or lead directly to construction, such as:

  + Planning and technical studies.
  + Federal-aid systems revisions.
  + Planning activities conducted pursuant to 23 and 49 U.S.C.

- Engineering to assess social, economic, and environmental effects of a proposed action or alternatives to that action.

- Noise attenuation.

- Advance land acquisitions (23 CFR Part 712 or 23 CFR Part 771)

- Acquisition of scenic easements.

- Plantings, landscaping, etc.

- Sign removal.

- Directional and informational signs.

- Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).

- Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational, or capacity changes.

4. *Exempt from Regional Emissions Analyses*

- Intersection channelization projects.
- Intersection signalization projects at individual intersections.
- Interchange reconfiguration projects.
- Changes in vertical and horizontal alignments.
- Truck size and weight inspection stations.

**26-11.03(c) Determining Highway Project Conformity**

To determine conformity of non-exempted projects within designated nonattainment areas, the district must ascertain whether the project is from a conforming transportation plan and a conforming Transportation Improvement Program (TIP) and satisfies other applicable conditions as specified in the conformity rules. As used in this procedure, the term "transportation plan" refers to the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area pursuant to 23 CFR Part 450. The term "Transportation Improvement Program" refers to the staged, multi-year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan and is developed pursuant to 23 CFR Part 450. The district should contact the Office of Planning and Programming if confirmation or clarification is needed regarding whether a specific project was in a conforming plan and TIP.

The project conforms with the requirements of the Clean Air Act if the district confirms that the following statements are applicable to the action:

- The project was included in a conforming transportation plan and TIP.

- The project design concept and scope have not changed significantly from what was reflected in the conformity analysis for the plan and TIP.

- The project will comply with $PM_{10}$ control measures in the State implementation plan.

(Other criteria and procedures will apply for determining conformity of projects within CO or $PM_{10}$ nonattainment areas. Districts should contact BDE for further guidance regarding such projects as the need arises.)

To determine conformity for projects in nonattainment areas or maintenance areas* outside of locations served by Metropolitan Planning Organizations, the district should contact BDE and the Office of Planning and Programming to initiate a regional emissions analysis. The purpose of this analysis is to demonstrate that the proposed project will not cause nor contribute to any

new localized violations nor increase the frequency or severity of any existing violations of the national ambient air quality standard for the criteria pollutant(s) which caused the area to be designated as nonattainment. The project will be determined to conform with the requirements of the 1990 Clean Air Act Amendments upon the concurrence of FHWA in the regional emissions analysis supporting this finding.

Projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined if none of the following major steps has occurred within three years of the conformity determination — NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications, and estimates. A new conformity determination also will be required if there is a significant change in project design concept and scope or if a supplemental environmental document for air quality purposes is initiated.

Regionally significant projects which do not involve Federal approvals or funding from FHWA do not require conformity determinations. However, under the conformity rules, IDOT may not approve these projects unless there is a currently conforming transportation plan and TIP for the area in which the project is located and the project satisfies specific conditions regarding its potential effect on regional air

**26-11.03(d) Documentation**

The environmental documentation for all projects subject to these procedures must include a statement regarding the status of the project with regard to the Clean Air Act conformity regulations (i.e., indicating that the project is outside of any designated non-attainment area, that the project is of a type exempted from conformity requirements, or that the project has been determined to satisfy the conformity regulations). The following paragraphs indicate the different statements that should be used for this documentation.

*Note: For those statements which include references to dates (e.g., for Transportation Improvement Programs and plans), the district should enter the dates in effect at the time of the conformity determination. BDE should be contacted for guidance if questions arise regarding particular projects.*

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[*] *"Maintenance area" means any geographic region of the United States previously designated nonattainment pursuant to the Clean Air Act Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the Clean Air Act, as amended.*

1. **Projects outside of nonattainment areas.** For projects which the district determines are completely outside of any designated nonattainment areas, the following statement should be included in the project environmental documentation:

   *No portion of this project is within a designated nonattainment area for any of the air pollutants for which the USEPA has established standards. Accordingly, a conformity determination under 40 CFR Part 93 ("Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 USC or the Federal Transit Act") is not required.*

2. **Exempt projects.** For actions which the district determines are located within a designated nonattainment area but which are covered by the exempt projects lists in Section 26-11.03(b) (which includes project types exempt from conformity and those exempt from regional emissions analyses), the following statement should be included in the project environmental documentation:

   *This project is located within a designated nonattainment area but is a project type which the USEPA has designated to be exempt from inclusion in the regional emissions analyses of transportation plans and Transportation Improvement Programs for purposes of determining conformity with the State Implementation Plan (SIP). This designation is based on USEPA's determination that the nature of the project is such that it would not affect the outcome of a regional emissions analysis.*

3. **Projects within a portion of a nonattainment area for which the Chicago Area Transportation Study (CATS) is the MPO.** The following paragraphs should be used to document the necessary findings for conformity of projects within a nonattainment area for which CATS is the MPO:

   *This project is included in the FY [indicate years] Transportation Improvement Program (TIP) endorsed by the Policy Committee of the Chicago Area Transportation Study (CATS), the Metropolitan Planning Organization (MPO) for the region in which the project is located. Projects in the TIP are considered to be consistent with the [indicate year] regional transportation plan endorsed by CATS.*

   *On [indicate date], the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) determined that the [indicate year] regional transportation plan conforms with the State Implementation Plan (SIP) and the transportation-related requirements of the 1990 Clean Air Act Amendments. On [indicate date], the FHWA and the FTA determined that the TIP also conforms with the SIP and the Clean Air Act Amendments. These findings were in accordance with 40 CFR Part 93, "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans,*

*Programs, and Projects Funded or Approved Under Title 23 USC or the Federal Transit Act."*

*The project's design concept and scope are consistent with the project information used for the TIP conformity analysis. Therefore, this project conforms to the existing State Implementation Plan and the transportation-related requirements of the 1990 Clean Air Act Amendments.*

4. **Projects within a nonattainment area served by a Metropolitan Planning Organization other than CATS.** The following paragraphs should be used to document the necessary findings for conformity of projects within a nonattainment area served by a Metropolitan Planning Organization other than CATS:

*This project is included in the Long-Range Transportation Plan and in the [indicate years] Transportation Improvement Program (TIP) endorsed by [indicate name of MPO], the Metropolitan Planning Organization (MPO) for the region in which the project is located.*

*On [indicate date] the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) determined that the Long-Range Transportation Plan conforms with the transportation-related provisions of the Clean Air Act Amendments of 1990. The FHWA and the FTA determined on [indicate date] that the TIP conforms with the Clean Air Act Amendments. These findings were in accordance with 40 CFR Part 93, "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and projects Funded or Approved Under Title 23 USC or the Federal Transit Act."*

*The project's design concept and scope are consistent with the project information used for the TIP conformity analysis. Therefore, this project conforms to the existing State Implementation Plan and the transportation-related requirements of the 1990 Clean Air Act Amendments.*

5. **Projects within a nonattainment or maintenance area not served by a Metropolitan Planning Organization.** For projects which the district determines will be located within a nonattainment area outside an area served by a Metropolitan Planning Organization, the following paragraphs should be used to document the necessary analysis and finding by the FHWA for conformity:

*This project is located within an area which the USEPA has designated as nonattainment in relation to the national ambient air quality standards for [insert name(s) of applicable criteria pollutant(s)]. The project is outside of an area served by a Metropolitan Planning Organization (MPO).*

*The Federal Highway Administration (FHWA) has reviewed the results of a regional emissions analysis prepared by the Illinois Department of Transportation which includes the proposed project. Based on the results of this analysis, the FHWA has determined that the project will not cause or contribute to any new localized violations of the standard[s] for [insert name(s) of applicable criteria pollutant(s)] nor increase the frequency or severity of any existing violations of the [insert name(s) of applicable criteria pollutant(s)] standard[s]. Therefore, this project conforms to the transportation-related requirements of the 1990 Clean Air Act Amendments.*

6. **"Regionally significant" non-Federal projects within a nonattainment area.** For "regionally significant" projects located in nonattainment areas which do not involve funding or approvals from FHWA, the following paragraphs should be used to document compliance with the conformity regulations:

*This project is located within an area which the USEPA has designated as nonattainment in relation to the national ambient air quality standards for [insert name(s) of applicable criteria pollutant(s)]. The project does not involve approvals or funding from the Federal Highway Administration but has been determined to be "regionally significant" under 40 CFR Part 93 "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and projects Funded or Approved Under Title 23 USC or the Federal Transit Act."*

*The Illinois Department of Transportation has confirmed that there is a currently conforming transportation plan and transportation improvement program and has determined that the plan, transportation improvement program, and project are consistent with 40 CFR Part 93.129, "Requirements for adoption or approval of projects by other recipients of funds designated under Title 23 USC or the Federal Transit Act."*